

FEASIBILITY ANALYSIS

LAND-FOR-LAND EXCHANGE

HURON-MANISTEE NATIONAL FORESTS

SEPTEMBER 2012

CASE NAME: GARDNER

CASE ID: HURON #2846



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## I. Background Information

The owners of a nonfederal parcel, Timothy B. Gardner and Patricia A. Gardner, were attempting to sell their home and 20-acre parcel located in Section 7, T25N, R2E, Big Creek Township, Oscoda County, Michigan. The prospective purchaser's lending institution conducted a mortgage inspection of the property. Results of the inspection report indicated the majority of the Gardner's improvements were located on adjacent National Forest System (NFS) lands. Mr. and Mrs. Gardner contacted the Mio Ranger District of the Huron-Manistee National Forests to discuss a possible resolution.

On December 5, 2011, the Forest Surveyor conducted a site visit and made enough measurements within Section 7 to verify that the Gardner's 2-story log home and garage do encroach south onto NFS land by as much as 43 feet. The Forest Surveyor also located an older single strand wire fence to the east and west.<sup>1</sup> (Exhibit 1; Encroachment Report)

Mr. and Mrs. Gardner submitted an application on December 16, 2012, requesting an interchange under authority of the Small Tract Act to resolve the encroachment. Their proposal was an interchange of approximate equal value of NFS land adjacent to their southern boundary for a parcel of their land on the western boundary, also adjacent to NFS land. As stated in their application, they constructed their garage and home based upon property fences that were shown to them when they purchased the property. Their application stated this fencing was wire attached to trees south of their house. (Exhibit 2; Small Tract Act Application)

In review of the Gardner's STA application and Forest personnel field visits, it is clear the location of the garage and house encroach south onto NFS land. It is also clear that the garage and most of the house are within the fence boundary they were told by the previous owner was their property line. However, portions of the Gardner's home (corner of a covered porch), a portion of propane tank, a 6" water well, and approximately 75' of irrigated lawn are outside of (south of) the old fence line.

As stated in the Code of Federal Regulations (36 CFR 254.32(a)): Conveyances under this subpart are limited to tracts of 10-acres or less to resolve encroachments by persons: [Who] in good faith relied on an erroneous survey, title search, or other land description which did not reveal such encroachment.

Mr. and Mrs. Gardner clearly stated in their STA application that they relied upon the old fence line as their southern property boundary and yet a corner of the house, portion of the propane tank, water well, and irrigation system were constructed over that line. It does not appear that the fence line was indeed utilized to ensure all development did not encroach on neighboring lands; this lacks *Good Faith*. The Forest discussed this situation with the Regional Surveyor who concurred this case would not meet the *Good Faith* requirement of the STA.

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<sup>1</sup> The nonfederal property owners state the previous owners told them the old fence line was their property line.



In a letter dated January 10, 2012, the Huron-Manistee National Forests informed Mr. and Mrs. Gardner that their application for an interchange under the authority of the Small Tracts Act fails to meet criteria established by regulation and will not be processed.

The Huron-Manistee National Forests contacted the Regional Office with a proposal to resolve the encroachment through a land-for-land exchange. The Forests' requested approval to move forward with development of an exchange proposal. Through a memo dated March 14, 2012, the Regional Office approved the Forest Supervisor to proceed with assembling a land exchange.

## II. Exchange Proposal

The proposal is to exchange approximately 3-acres of National Forest System land for approximately 3-acres of nonfederal land of approximately equal value. The nonfederal land is owned by Timothy and Patricia Gardner.

## III. Authorities

This land-for-land exchange is proposed under the authority of the Weeks Act of March 1, 1911, as amended, the Federal Land Policy and Management Act of October 21, 1976, as amended and the Federal Land Exchange Facilitation Act of August 20, 1988.

## IV. Boundary Management Review

Survey will be obtained by nonfederal land owner and approved by Forest Surveyor.

Land Description Verification forms will be prepared by the Forest Surveyor once this Feasibility Analysis is approved.

### Nonfederal Property

The nonfederal property being considered in the exchange is approximately 3 acres. It is the westerly  $\pm 205'$  of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 7, T25N, R2E. See attached map.

### *Legal and Physical Access*

Galloway Road is used to access the property.

### Federal Property

The Federal property being considered in the exchange is approximately 3 acres and is a strip of land  $\pm 120'$  wide south of the Gardner's home in a part of the N $\frac{1}{2}$  N $\frac{1}{2}$  NW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 7, T25N, R2E. See attached map.

### *Legal and Physical Access*

Galloway Road is used to access the property.

## V. Forest Plan Compliance

The proposed land-for-land exchange is in conformance with the approved Land and Resource Management Plan (Forest Plan) for the Huron-Manistee National Forests. The Forest Plan does not contain any direction that would preclude this land-for-land exchange.

The proposal is consistent with the *Forest Wide Goals and Objectives* of the Forest Plan, specifically:

### *FP Goal - G-NR-23, Page II-5 Land Adjustments, #3.*

Land Adjustments (purchase and exchange) will consider only the interest needed to achieve land management objectives and must satisfy one or more of the following purposes: (3) result in more efficient land ownership patterns as indicated by reduced resource management costs.

The proposal is consistent with the *Forest Wide Standards and Guidelines* of the Forest Plan.

### *Forest-Wide Standards and Guidelines 5400 LAND OWNERSHIP*

- I. Surface Ownership
  - A. Land Adjustments
    - 1.No floodplains will be exchanged away without a flood hazard risk analysis and appropriate mitigative measures where needed to protect life and property.
  - B. Land-for-Land Exchange
    - 1.Exchange of all National Forest System lands will be coordinated with the State of Michigan, tribal governments and local units of governments. There will be no land exchange in management area 5.1.

Both the nonfederal and Federal parcels are within Management Area (MA) 4.4, Rural, as identified by the Forest Plan. The proposal is consistent with the *Standards and Guidelines* for this MA.

Neither the Federal or nonfederal parcel contain any floodplains.



If the land exchange proposal is approved to move forward, appropriate consultation with the State of Michigan, tribal governments and local units of government will be conducted. Over the years, numerous land-for-land exchanges have been accomplished across the Forest and traditionally not met with resistance from the State, tribal or local governments. None is expected in this case.

## VI. Public Interest Determination

This land-for-land exchange is considered to be in the public interest and the following factors were considered in making this determination.

The Huron-Manistee National Forests considered requiring removal of the structures encroaching onto NFS land. While legally viable, requiring removal would be a costly venture that the home owners would most likely not be able to afford given their current economic situation; removal of the entire house would be necessary due to its log construction. Requiring removal could result in abandonment of the property by the homeowners and the Forest Service incurring cost for removal and subsequent legal action to recover those costs.

As an alternative, the Huron-Manistee National Forests propose a land-for-land exchange of approximately 3-acres to resolve the encroachment. Requiring removal is expected to be significantly more costly and time consuming than conducting a land exchange due to potential litigation. Another result of requiring removal would be Forest Service retention of completely disturbed and degraded land in lieu of acquiring several acres of undisturbed forest land which is more appropriately managed as National Forest.

All land adjustment cases on the Huron-Manistee National Forests are evaluated on a case-by-case basis; individual merits and consequences are analyzed in making the public interest determination and development of a reasonable solution. Pursuing resolution of this case through an exchange is considered in the public interest, most cost effective for the government, and should not set a precedent for the Forest Service.

## VII. Preliminary Title Evidence

Fee simple interest is owned by Timothy B. Gardner and Patricia A. Gardner

### *Legal Description:*

A part of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 7,  
Township 25 North, Range 2 East,  
Big Creek Township, Oscoda County  
Approximately 3.0 acres.



*Reservations:* None

*Outstanding Rights:*

Easement for public utilities in favor of Consumers Power Company as evidenced by instruments recorded in Liber 43, Page 00423 and Liber 201, Page 12632.

Subject to full mineral rights as evidenced by instruments recorded in Liber 122, Page 00409, Liber 124, Page 00108 and Liber 170, Page 00473.

Easement 10 feet in width being 5 feet on each side of Galloway Road for the purpose of piling of snow as disclosed in Judgment dated 2/3/1983 naming Richard T. Schliskey and Mary J. Schliskey, his wife, as plaintiff VS. Oscoda County Road Commission as Defendant and recorded 2/22/1983 in Liber 133, Pages 00039-00042 and Liber 134, Pages 00461-00464

A copy of the Title Commitment and Certificate of Possession are attached.  
(Exhibit 3; Title Commitment and Exhibit 4; Certificate of Possession)

VIII. Federal Land Status Report

The subject Federal property was acquired through an exchange with the State of Michigan in 1920.

A copy of the Federal Statement of Status is attached. (Exhibit 5; Statement of Status)

*Legal Description:*

A part of the N $\frac{1}{2}$  N  $\frac{1}{2}$  NW $\frac{1}{4}$  SE $\frac{1}{4}$ ,  
Section 7, Township 25 North, Range 2 East,  
Big Creek Township, Oscoda County  
Approximately 3.0 acres.

*Outstanding Rights:* None

*Reservation to be made by the United States:* None

IX. Water Rights Analysis

Water rights are not applicable to either parcel involved in this case.

X. Valuation Consultation

Valuation of the parcels will be requested once the Feasibility Analysis is approved.

XI. Support and Potential Issues

There are no known issues associated with this proposal. There have been other land-for-land exchange cases on the Huron National Forest in the past and there has been no opposition from counties or others.

We have been contacted by Congressman Dan Benishek's office supporting the proposal to resolve the encroachment.

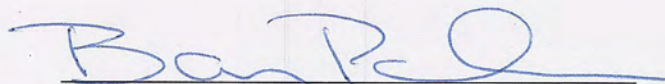
There are no known threatened, endangered or sensitive species known to be on the Federal parcel. A review of maps for both the Federal and nonfederal parcels indicates there are no floodplains or wetlands on the parcels. There are no known Native American Religious or Cultural Sites, Archaeological Sites or Historic Properties or Areas associated with this project. There is no prime/unique farmland or prime timberland on any of the parcels. Neither of the parcels is located in any inventoried roadless areas, research natural areas or congressionally designated areas. As indicated in the Certificate of Possession, there are no known hazardous substances, materials or petroleum products on the nonfederal parcels. The hunting blinds identified in the Certificate of Possession will be removed prior to the United States accepting title to the non-federal land.

XII. Recommendation

I recommend that this land-for-land exchange proceed.

Date:

9/27/2012



BARRY PAULSON, Forest Supervisor  
Huron-Manistee National Forests



Exhibits:

Exhibit 1	Encroachment Report
Exhibit 2	Small Tract Act Application
Exhibit 3	Title Commitment – Nonfederal tract
Exhibit 4	Certificate of Possession
Exhibit 5	Statement of Status – Federal tract
Exhibit 6	Photograph and Aerial Photograph
Exhibit 7	Draft ATI & Implementation Schedule