

FORMAT EXAMPLE - NOT A FORM

EXCHANGE AGREEMENT

OMB No. 0596-0105

This Exchange Agreement, made this _____ day of _____, 20____, between _____1/_____, whose address is _____2/_____, hereinafter referred to as the non-Federal party, and the United States of America, acting by and through the Forest Service, Department of Agriculture, in consideration of the appraisals by the parties hereto of the land or interest in land herein described and other good and valuable considerations, the receipt of which is hereby acknowledged, do hereby severally agree as follows:

WITNESSETH:

Pursuant to the acts of _____3/_____, the non-Federal party does hereby agree to convey to the United States of America the real property described in Schedule A, attached hereto and made a part hereof. In exchange therefore, the United States of America agrees to convey to the non-Federal party by _____4/_____ issued by the _____5/_____, the real property described in Schedule B, attached hereto and made a part hereof _____6/_. The agreed to values for this exchange are:

Property of the non-Federal party: \$ _____7/_____
Property of the United States: \$ _____8/_____

First, the non-Federal party agrees to convey by Warranty Deed in accordance with Department of Justice Standards when requested by the Forest Service, the lands or interest in lands described in Schedule A to the United States of America and its assigns, together with necessary documents required to convey good title, free from all encumbrances except those set forth in Schedule A.

Second, the non-Federal party agrees to deliver all necessary documents to the Forest Supervisor, _____9/_____ National Forest, who will act as escrow holder or in the alternative to _____10/_____, who shall act as escrow holder.

Third, the non-Federal party agrees to furnish title evidence on the real property described in Schedule A in a form satisfactory to the Office of the General Counsel of the United States Department of Agriculture.

Fourth, the non-Federal party agrees to bear the cost of any survey necessary to properly describe and locate the real property described in Schedule A.

When title is acceptable to the Forest Service, the United States of America agrees to convey by _____11/_____ the real property described in Schedule B, subject to any encumbrances noted therein.

39 - Exhibit 26--Continued

The United States of America agrees to bear the cost of any survey necessary to properly describe and locate the real property described in Schedule B.

Both parties agree not to do, or suffer others to do, any act by which the value of the real property which is the subject of the exchange agreement may be diminished or further encumbered. In the event any such loss or damage occurs from any cause, including acts of God, to the real property described in Schedules A and B, prior to execution of deed or issuance of _____ 12/ _____, either party may refuse without liability to complete the exchange.

Each party to this exchange agreement is responsible to provide the other documentation of the existence or non-existence of storage of hazardous substances stored on their respective lands for one (1) year or more or disposed of or released on said lands. If evidence of hazardous substances are found, either party may refuse without liability, to complete the exchange (see Attachment A).

13/ This exchange is subject to a 45-day administrative review of the decision.

14/ This exchange is subject to Secretary approval and/or 30-day congressional oversight.

15/ If floodplains are involved, closing of this exchange shall not occur until the 30-day publication period has expired.

This agreement will be terminated in the event that either party cannot convey good and sufficient title to the real property agreed to be exchanged.

This agreement is legally binding on all parties, subject to the terms and conditions herein and may only be amended or terminated by mutual consent.

No member of Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit that may arise there from unless it is made with a corporation for its general benefit (18 U.S.C. 431, 433).

IN WITNESS WHEREOF, the non-Federal party and the _____ 16/ _____, acting for and on behalf of the Forest Service, USDA, have executed this Agreement this _____ day of _____, 20_____.

NON-FEDERAL PARTY:

By: _____ 17/ _____

AUTHORIZED

OFFICER

FOREST SERVICE
U.S. DEPARTMENT OF

AGRICULTURE

By: _____ 18/ _____

39 - Exhibit 26--Continued

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0105. The time required to complete this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ACKNOWLEDGMENT

19/

SCHEDULE A

Lands, interest in lands, that the non-Federal party will convey to the United States of America:

Fee title to the following lands in 20/:

21/

Containing 22/ acres, more or less.

Subject to:

Reservations: 23/

Outstanding Rights: 24/

SCHEDULE B

Lands, interest in lands, that the United States will convey to the non-Federal party:

Fee title to the following lands in 25/:

26/

Containing 27/ acres, more or less.

Subject to:

Reservations: 28/ _____

Outstanding Rights: 29/ _____

Other: 30/ _____

39 - Exhibit 26--Continued

ATTACHMENT A

Environmental Quality Provision

In the event it is discovered, before the United States has recorded the deed which conveys the subject property to the United States, that the subject property (property to the United States) is contaminated, including but not limited to contamination resulting from solid wastes, hazardous wastes or substances, pollutants or contaminants, or other regulated substances, or that the subject property is in a condition which would constitute a violation of any applicable federal, State, or local laws or regulations relating to the protection of health, safety, or the environment, the United States may, at its sole election and without incurring any liabilities or obligations arising there from, either:

- 1) Declare this Exchange Agreement to be null and void; or
- 2) Adjust the acreage and description of the subject property (property to be conveyed to the United States) thereby excluding from the conveyance those portions of the parcel which are affected by the newly discovered contamination or condition. Correspondingly, the consideration to be given by the United States, as set forth under this Exchange Agreement shall be adjusted accordingly to reflect the adjustment concerning the subject property to be conveyed to the United States.

All representatives, warranties, obligations and rights set forth herein shall survive the closing and not merge with the deed such that they are binding and enforceable even after the deed has been conveyed to the United States, but only until the United States has recorded the deed which conveys the subject property to the United States.

1/ Name of non-Federal party.

2/ Address of non-Federal party.

3/ Insert proper authorities. Use the Act of March 1, 1911, as amended (16 U.S.C. 516), rather than the Act of March 3, 1925, for Weeks Law exchanges. The Fiscal Year Appropriation Act must also be cited in the Organic Act of August 3, 1956, cases. Cite the Act of October 21, 1976 (43 U.S.C. 1716), and the Act of August 20, 1988 (43 U.S.C. 1716) in all exchange conveyances.

4/ Insert patent, quitclaim deed, and/or exchange deed.

5/ Insert Departments of the Interior and/or Department of Agriculture.

6/ When there is a cash equalization payment, insert ". . . and in addition thereto pay the sum of _____ and ___/100 dollars (\$_____) to the _____ (United States/non-Federal party, as appropriate) in order to equalize values pursuant to Section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716)."

7/ Insert lump sum or per acre value.

8/ Insert lump sum or per acre value.

39 - Exhibit 26--Continued

- 9/ Insert Name of National Forest.
- 10/ Insert Name of escrow holder.
- 11/ Insert patent, quitclaim deed, and/or exchange deed.
- 12/ Insert patent, quitclaim deed, and/or exchange deed.
- 13/ Insert, if applicable, reference to appeal rights at 36 CFR 215 and 36 CFR 251.
- 14/ Insert, if applicable.
- 15/ Insert, if applicable.
- 16/ Insert title per delegated authority (FSM 5400 Zero Code).
- 17/ Insert signature and name of non-Federal party.
- 18/ Insert signature and title per delegated authority (FSM 5400 Zero Code).
- 19/ To conform to State laws, if appropriate.
- 20/ Insert the name of the State.
- 21/ Insert legal description.
- 22/ Insert numbers of acres.
- 23/ Insert reservations acceptable to the United States. (ch. 60).
- 24/ Insert outstanding rights from title evidence, which are acceptable to the United States and disposition of those that are unacceptable to the United States.
- 25/ Insert the name of the State.
- 26/ Insert legal description.
- 27/ Insert numbers of acres.
- 28/ Insert reservations of the United States. (ch. 60).
- 29/ Insert outstanding rights as noted on Status Report.
- 30/ Insert disposition of Special Use Permits, Withdrawals, and so forth.