

Supporting Statement for OMB 0596-0105

Land Exchanges

January 2010

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Statutes and Regulations:

- 7 USC 428 a(a) - Acquisition of land; options
- 7 USC 1011 - Powers of Secretary of Agriculture
- 16 USC 484a - Exchange of lands in national forests; public schools; deposit of funds by school authority with insufficient exchange land; limitations on use
- 16 USC 485 - Exchange of lands in national forests; cutting timber in national forests in exchange for lands therein
- 16 USC 486 - Exchange of lands in national forests; reservations of timber, minerals, or easements
- 16 USC 516 - Exchange of lands in the public interest; equal value; cutting and removing timber; publication of contemplated exchange
- 16 USC 551 - Protection of national forests; rules and regulations
- 16 USC 555a - Exchange of lands
- 43 USC 1701 - Congressional declaration of policy
- 43 USC 1715 - Acquisitions of public lands and access over non-Federal lands to National Forest System lands
- 43 USC 1716 - Exchanges of public lands or interests therein within the National Forest System
- 43 USC 1740 - Rules and Regulations
- Title 36 CFR 254, Subpart A - Land Exchange

Land exchanges are discretionary, voluntary real estate transactions between the Secretary of Agriculture (acting by and through the Forest Service) and a non-Federal exchange party (or parties). Non-Federal parties can initiate land exchanges, include: an individual; a non-Federal landowners; an agent of a landowner (broker, third party); a non-Federal public agency (state or local government); corporations; or other legal entity legally capable to hold title to and convey land.

Each land exchange requires preparation of an *Agreement to Initiate*, specifying the preliminary and non-binding intentions of the non-Federal land exchange party and the Forest Service in pursuing a land exchange. As the exchange

proposal develops, the Forest Service and the non-Federal land-exchange party may enter into a binding *Exchange Agreement*, pursuant to Title 36 CFR part 265, Subpart A, section 254.14 - Exchange Agreement. This document records conditions necessary to complete the exchange.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

a. What information will be collected - reported or recorded? (If there are pieces of information that are especially burdensome in the collection, a specific explanation should be provided.)

Each land exchange requires preparation of an *Agreement to Initiate*, (36 CFR 254, subpart C, §254.4) and must include:

- The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;
- A description of the lands or interest in lands being considered for changes;
- A statement by a party, other than the United States and State and local governments, that such party is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;
- A description of the appurtenant rights proposed to be exchanged or reserved; any authorized uses, including grants, permits, easements, or leases; and any known unauthorized uses, outstanding interests, exceptions, covenants, restrictions, title defects or encumbrances;
- A time schedule for completing the proposed exchange;
- An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;
- A statement specifying whether compensation for costs assumed will be allowed;
- Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands;
- A grant of permission by each party to physically examine the lands offered by the other party;
- The terms of any assembled land exchange arrangement;
- A statement as to the arrangements for relocation of any tenants occupying non-Federal lands;
- A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands;
- Description of process used to exchange documents of conveyance upon

successful completion of the exchange proposal.

As the exchange proposal develops, the Forest Service and the non-Federal land-exchange party may enter into a binding *Exchange Agreement* (36 CFR 265, subpart A, section 254.14). The *Exchange Agreement* documents conditions needed to complete the exchange and must contain:

- Identification of the parties, description of the lands and interests to be changed, identification of all reserved and outstanding interests, stipulation of any necessary cash equalization, and all other terms and conditions necessary to complete and exchange.
- Inclusion of the terms regarding responsibility for removal, indemnification (“hold harmless” agreement, or other remedial actions concerning any hazardous substances on the involved non-Federal lands; and
- The agreed upon values of the involved lands, until consummation of the land exchange.

The information collected is stored under file code 5430, and the appropriate secondary or tertiary category. Retention periods are a minimum of 3 years, but vary depending upon the secondary or tertiary category. (FSH 6209.12) Examples of formats for *Agreement to Initiate* and *Exchange Agreement* are separate attachments to this information collection package.

b. From whom will the information be collected? If there are different respondent categories (e.g., loan applicant versus a bank versus an appraiser), each should be described along with the type of collection activity that applies.

The Forest Service collects the information from the non-Federal party (or parties) participating in the land exchange. Land exchanges can be initiated by a non-Federal party (or parties). Non-Federal parties include: an individual; a non-Federal landowners; an agent of a landowner (broker, third party); a non-Federal public agency (state or local government); corporations; or other legal entity legally capable to hold title to and convey land.

c. What will this information be used for - provide ALL uses?

All parties use the collected information to facilitate completion of the land exchange. All involved parties use the mandatory *Agreement to Initiate* as a record of the non-binding decision to continue with the land exchange and to document agreed upon specific details of the exchange as required by 36 CFR 254.4(c).

The *Exchange Agreement*, if used, is a binding contract between the Forest Service and nonfederal exchange parties to the terms, conditions and property values identified prior to closing.

d. How will the information be collected (e.g., forms, non-forms, electronically, face-to-face, over the phone, over the Internet)? Does the respondent have multiple options for providing the information? If so, what are they?

Forest Service personnel collect the information via telephone or in person from parties involved in the exchange.

e. How frequently will the information be collected?

Initially, collection of information occurs once. Collection of additional information occurs if amendments to the agreement receive mutual consent.

f. Will the information be shared with any other organizations inside or outside USDA or the government?

The information collected is available to the non-Federal exchange parties until consummation of the land exchange.

g. If this is an ongoing collection, how have the collection requirements changed over time?

This has been an ongoing collection since the promulgation of the Land Exchange regulations in 1994. Collection efforts have not changed over time, other than variance in the average number of completed land exchanges over the years.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

The Forest Service prepares agreement documents; the non-Federal party reads and signs the documents. The Forest Service uses fax machines and the internet to send the documents to the non-Federal party in instances when a short-turnaround is necessary.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

Each land exchange is a unique situation. Each document has some standard phrasing. The *Agreement to Initiate* and *Exchange Agreement* include language specific to the particular circumstances of each exchange. While other Federal agencies participate in land exchanges, those agencies collect information pertinent to those specific exchanges and such information is not relevant to this collection.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

As designed, the agreement process minimizes the amount of time the exchange party must spend providing information, reading and commenting.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Collection of this information is necessary for land exchanges to occur. The

purpose of the majority of land exchanges is consolidation of landownership patterns. Lack of exchanges would negatively affect the public, as the Forest Service and non-Federal landowners would have to spend significant funds on survey of boundaries. In addition, non-Federal landowners would incur costs of encroachment and trespass on Federal lands.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances. The collection of information occurs in a manner consistent with the guidelines in 5 CFR 1320.6.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

On September 29, 2009, the Federal Register published a 60-day period notice at 74 FR 49848. One comment from Sealaska was received in response to this publication of notice. Sealaska has many years of experience with the Forest

Service land exchange program. Below is the summary of key points in the letter and is followed by the Forest Service response.

The Summary of Sealaska Major Points and Forest Service Response:

Comment: Sealaska finds the regulations under 36 C.F.R. Part 254, Subpart A “frustrating, dysfunctional, and exceedingly costly and cumbersome due to excessive, unnecessary information collection burdens imposed by the Forest Service.”

Response: Land Exchanges are discretionary, voluntary real estate transactions between the Secretary of Agriculture (acting by and through the Forest Service) and a non-federal exchange party (or parties) involving the disposition of federal land from the federal estate in exchange for privately held lands owned by a private party or parties.

As the exchange proposal develops, the Forest Service and the non-Federal land exchange party may enter into a binding *Exchange Agreement*, pursuant to Title 36 CFR 254, subpart A. The Exchange agreement documents are the conditions that must be met to complete the exchange. The *Exchange Agreement* can contain information such as identification of parties, descriptions of lands and interest to be exchanged, identification of all reserved and outstanding interest, and all other terms and conditions which are necessary information to complete the land exchange.

Comment: The collection has excessive information collection requirements burden on Alaska Natives and other nonfederal parties.

Response: Each land exchange requires preparation of an *Agreement to Initiate* which contains information with description of the properties considered in the land exchange, an implementation schedule of action items, identification of the party responsible for each action item as well as target dates for completion of each action item. The information the Forest Service collects from the non-federal party is necessary to complete the *Agreement to Initiate* and the *Exchange Agreement*. Each land exchange is unique and there is no information available from other sources. Additionally, there are no standardized forms that are associated with this information collection which decreases the burden on Alaska Natives and other nonfederal parties.

Comment: The burdens can be reduced by reform of the Forest Service land exchange regulations as well as improved cost-effective Forest Service staffing and budget for land exchanges.

Response: Land exchanges are an important tool to consolidate landownership for purposes of more efficient management; to secure important Forest Plan objectives of resource management, enhancement, development, and protection; and to fulfill other public needs such as acquiring lands important for such resources as fisheries habitat, wild and scenic rivers, wildlife habitat, and wilderness. A land exchange occur where the United States has identified either federal land or federal interest in land available for exchange and a non-Federal party has identified either private land or private interest in land they are

interested in exchanging.

The primary authorities used to perform land exchanges involving National Forest Systems lands include the General Exchange Act, the Weeks Act, the Federal Land Policy and Management Act and the Federal Land Exchange Facilitation Act. The General Exchange Act of March 20, 1922 (16 U.S.C. 485,6 or 42 Stat. 465) provides for the conveyance of National Forest lands and/or timber reserved from the public domain in exchange for non-Federal lands suitable for National Forest purposes. The Weeks Act of March 1, 1911(16 U.S.C. 516 or 36 Stat. 961), provides for the conveyance of National Forest land/or timber with Weeks Act (acquired land) status in exchange for non-Federal lands which are chiefly valuable for the regulation of the flow of navigable stream or for timber production.

These Acts are supplemented by the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701,7 U.S.C. 1212a, 16 U.S.C. 478a or 90 Stat. 2743), which provides for the exchange of interests in land (mineral interests, rights-of-way, conservation easements, etc.) as well as for land and timber and the Federal Land Exchange Facilitation Act of August 20, 1988 (43 U.S.C. 1716, 43 U.S.C. 751 or 102 Stat. 1086) which confirmed the discretionary nature of land exchanges and emphasized that the Secretary or any other party may withdraw from an exchange at any time during the process, unless and until, the parties have entered into a binding exchange agreement.

The Bureau of Land Management was contacted to obtain their views on the collection of information to complete an agreement to initiate and exchange agreement. The rules they operate under are very similar to the Forest Service and the information collected is specifically identified in 43 CFR 2200.0-9.

Comment: The *Agreement to Initiate* has no binding effect on the Forest Service and includes multiple additional time-consuming and expensive steps to processing an *Exchange Agreement*. The ATI provides no assurance that an exchange is likely to be completed.

Response: The *Agreement to Initiate* is a non-binding document. Respondents answer questions in the *Agreement to Initiate* that include the description of properties being considered in the land exchange; an implementation schedule of action items relating to preparation and review of an appraisal of the land, public scoping and notification, preparation of specialist reports, etc., and the identification of the party responsible for each action item, as well as target dates for completion of each action item. Action items may include the appraisal, public scoping, and specialist reports. Forest Service personnel collect the information by phone, in face to face meetings with land exchange parties, or by requesting in a letter to the exchange party that the requested information be submitted by mail.

Comment: The excessive information collection burden associated with Forest Service exchanges stands as a deterrent to completing more land exchanges for the public benefit.

Response: The information to complete the agreement to initiate and the

exchange agreement is collected only once from each exchange proponent, unless the exchange is modified. All efforts have been made to design the agreement to initiate and exchange agreement to minimize the amount of time the exchange party must spend in reading and commenting on the documents. The “forms” have basically been designed to meet the requirements of 36 CFR 254. The items to be included in an agreement to initiate are found at 36 CFR 254.4 and include such items as description of the lands or interests to be considered in the exchange, the identity of the parties involved, and the time schedule, etc. The items to be included in an exchange agreement are found at 36 CFR 254.14 and include identification of parties, land and interests to be exchanged, values, etc.

The information to complete the agreement to initiate and the exchange agreement is collected only once from each exchange proponent, unless the exchange is modified. The collection of the information could not be collected less frequently. To not collect the information would mean the land exchange would be dropped since it would no longer meet the necessary provisions of the regulations.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Forest Service contacted individuals to request feedback on the preparation of the *Agreement to Initiate* and the *Exchange Agreement*. The *Trust for Public Land* and the *Western Land Exchange Company* were both contacted to express their concerns with the collection of information for the completion of the exchange agreement and the agreement to initiate. In summary, they commented that they did not have concerns with the agreements. Specific individuals contacted:

Adam Poe
Western Land Group, Inc.,
1760 High St., Denver, CO 80218

Janine Blaeloch
Western Land Group, Inc.,
1760 High St., Denver, CO 80218

9. Explain any decision to provide any payment or gift to respondents, other than re-enumeration of contractors or grantees.

There will be no payment or gift to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Information contained in the agreements is not confidential. These documents are subject to the Freedom of Information Act. Release of final agreements is allowable.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Information of a sensitive nature is not collected.

12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form.**

- a) **Description of the collection activity**
- b) **Corresponding form number (if applicable)**
- c) **Number of respondents**
- d) **Number of responses annually per respondent,**
- e) **Total annual responses (columns c x d)**
- f) **Estimated hours per response**
- g) **Total annual burden hours (columns e x f)**

(a) Description of the Collection Activity	(b) Form Number	(c) Number of Respondents	(d) Number of responses annually per Respondent	(e) Total annual responses (c x d)	(f) Estimate of Burden Hours per response	(g) Total Annual Burden Hours (e x f)
Agreement to Initiate: <ul style="list-style-type: none"> • Nonfederal exchange partner's interview with FS, • Nonfederal exchange partner's review of legal documents 	None	60	1	60	1	60
Exchange Agreement: <ul style="list-style-type: none"> • Nonfederal exchange partner's interview 	None	60	1	60	1	60

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(a) Description of the Collection Activity	(b) Form Number	(c) Number of Respondents	(d) Number of responses annually per Respondent	(e) Total annual responses (c x d)	(f) Estimate of Burden Hours per response	(g) Total Annual Burden Hours (e x f)
with FS, • Nonfederal exchange partner's review of legal documents						
Totals	---	60	---	120	---	120

- **Record keeping burden should be addressed separately and should include columns for:**
 - a) **Description of record keeping activity:** None
 - b) **Number of record keepers:** None
 - c) **Annual hours per record keeper:** None
 - d) **Total annual record keeping hours (columns b x c):** Zero
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

(a) Description of the Collection Activity	(b) Estimated Total Annual Burden on Respondent (Hours)	(c) Estimated Average Income per Hour*	(d) Estimated Cost to Respondent
Agreement to Initiate	60	\$55	\$3,300
Exchange Agreement	60	\$55	\$3,300
Totals	120	---	\$6,300

*Income varies depending upon respondent. Management, business, and financial employee hourly rate including benefits is used. Source: <http://www.bls.gov/news.release/pdf/ecec.pdf>

- 13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.**

There are no capital operation and maintenance costs.

- 14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.**

The response to this question covers the actual costs the agency will incur as a result of implementing the information collection. The

estimate should cover the entire life cycle of the collection and include costs, if applicable, for:

Employee labor and materials for developing, printing, storing forms

Employee labor and materials for developing computer systems, screens, or reports to support the collection

Employee travel costs

Cost of contractor services or other reimbursements to individuals or organizations assisting in the collection of information

Employee labor and materials for collecting the information

Employee labor and materials for analyzing, evaluating, summarizing, and/or reporting on the collected information

(a) Description of the Collection Activity	(b) Estimate of Forest Service Burden Hours per response	(c) Number of responses annually	(c) Estimated Total Annual Burden on Forest Service (Hours)	(d) Estimated Cost per Hour for Forest Service	(e) Estimated Cost to the Forest Service
Agreement to Initiate	3	60	180	\$60	\$10,800
Exchange Agreement	4	60	240	\$60	\$14,400
Total	---	---	---	---	\$25,200

* Agreement to Initiate is reviewed at the GS12/13 level and approved at the GS-14/15 level. Estimated hourly wage is approximated from Federal Salary Table 2009-GS-DCB. Government's hourly wage rate in the chart includes a multiplier of 1.3x. The multiplier was applied to account for employee benefits, <http://data.bls.gov/cgi-bin/print.pl/news.release/ecec.htm>.

Estimated total cost to the Forest Service is \$25,200.

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of OMB form 83-I.

The Forest Service believes the number of respondents will remain constant at 60 agreements annually for the next three years. Cost per hour rates for both government and public employees are adjusted to better reflect their true cost (i.e. hourly wage with benefits). This has increased the cost estimates for both the government and the public to better exhibit the appropriate cost to both parties.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

There are no plans to publish the information collected.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Since no forms are used, the Forest Service requests approval to omit the expiration date from the correspondence and documents that are prepared under the OMB approval for this collection.

18. Explain each exception to the certification statement identified in item 19, "Certification Requirement for Paperwork Reduction Act."

There are no exceptions to the certification statement other than the one listed in item 17.

B. Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.