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Approved: CHRISTOPHER FRENCH
Deputy Chief, NFS

Date Approved:

Posting Instructions: Amendments are numbered consecutively by handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this handbook was 5509.11-2013-1.

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| Superseded Document(s) by Issuance Number and Effective Date | 5509.11-2013-1, 22, 23 and 26 (Amendment 5509.11-2013-1, 04/17/2013) 5509.11,20 Contents (Amendment 5509.11-92-4, 08/03/1992) 5509.11,21-21.84 (Amendment 5509.11-92-4, 08/03/1992) 5509.11,21.85-21.9 (Amendment 5509.11-92-4, 08/03/1992) 5509.11,21.9 Ex.01 (Amendment 5509.11-92-4, 08/03/1992) 5509.11,22-25 (Amendment 5509.11-92-4, 08/03/1992) | 65 Pages 2 Pages 24 Pages 15 Pages 1 Page 12 Pages |

Digest:
21 - Updates directives to reflect current law and direction, including changes to the Small Tracts Act and to the Department of Justice’s Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016) (DOJ Title Regulations).

21.1 - Revises section to update direction on land subject to small tract conveyances.

21.12 - Updates direction to reflect general procedures for accepting applications and processing discretionary conveyances of certain mineral survey fractions under public sale procedures.

21.12a - Updates direction on encroachments.

21.12d - Establishes code, caption and provides direction on “Conveyance of Parcels 40 acres or less.”

21.32a - 21.32b - Removes exhibit and provides direction to consult an experienced Realty Specialist for guidance on preparing conveyance agreements and public sale transactions.

21.4 - Updates direction with a link to the Department of Justice (DOJ) for guidance regarding title approval for acquisition of lands to be acquired by the United States.

21.42 - Provides link to DOJ’s website for direction on the title standards promulgated by the Department of Justice in “Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions” (DOJ Title Regulations).
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21 - SMALL TRACTS ACT ADJUSTMENTS

21.01 - Authority

The Secretary of Agriculture has the authority to resolve certain land ownership disputes associated with encroachments and land management problems pursuant to Public Law 97-465 by conveying, through sale, exchange or interchange.

1. Small Tracts Act of January 12, 1983 (96 Stat. 2535; 16 U.S.C. 521c-i) as amended by Title VIII, Subtitle F, Part II, Section 8621 of the Agriculture Improvement Act of 2018 (Pub. L. 115-334). This Act provides the Secretary of Agriculture with discretionary authority to sell, exchange, or interchange by quitclaim deed all the United States' right, title, and interest, including the mineral estate, in and to certain limited categories of National Forest System lands.


3. Weeks Act of March 1, 1911, as amended (36 Stat. 962; 16 U.S.C. 519). Under section 10 of this Act, certain valuable agriculture lands, inadvertently or of necessity acquired along with Weeks Act purchases and not needed for public purposes, may be sold to actual settlers.

4. Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (50 Stat. 525; 75 Stat. 318; 7 U.S.C. 1011). Section 32(c) and 32(d) of this Act authorizes the Secretary of Agriculture to sell, exchange, lease, or otherwise dispose of such property to public authorities and agencies under such terms and conditions as the Secretary deems would accomplish the purposes of the Act.

5. Federal Property and Administrative Services Act of June 30, 1949 (63 Stat. 378; 40 U.S.C. 471), as amended. This Act authorizes the sale of property that is surplus to the needs of the United States. However, the Act does not apply to lands reserved or dedicated for National Forest purposes.

6. Forest Service Omnibus Act of June 20, 1958 (72 Stat. 217; 16 U.S.C. 565b). Section 5 of this Act authorizes the Secretary of Agriculture to transfer to States and political subdivisions or agencies fire lookout towers and other structures or improvements as well as the land upon which they are located, if such land is outside National Forest boundaries.
7. **Forest Service Facilities Realignment Act of 2005** (119 Stat 559–563; 16 U.S.C. 580d, as amended). This Act provides for sale lease or exchange of administrative lands and facilities which are excess to the needs of the Forest Service. The proceeds must be retained for the acquisition, improvement, maintenance, reconstruction, or construction of a facility or improvement for the National Forest System. (See 36 Code of Federal Regulations (CFR) 254, subpart C)

21.02 - Objectives

(See FSM 5502)

21.03 - Policy

1. Use FSM 5503 for standards and procedures to make prerequisite public interest determinations and carry out an effective and efficient program for resolving title claims and conveying qualified unmanageable tracts in response to applications or under initiated sales procedures. This authority applies to the eleven Western States.

2. Use applicable Small Tracts Act (STA) sale, exchange, or interchange authority to negotiate settlement of innocent encroachment-type title claim cases or the equitable distribution of mineral survey fractions and certain road rights-of-way among or with abutting landowners. For this purpose, the documented negotiations are deemed to be the same as an application under the STA.

3. Apply the public interest criteria, 36 CFR 254.36, to determine if negotiated sale, exchange, or interchange should be made with the occupants of mineral survey fractions who do not qualify as applicants (sec. 21.81a).

4. Provide an opportunity for other agencies' input when making the public interest determination relative to conveying United States title, rights, or interest in National Forest System lands withdrawn for other agency purposes.

See FSM 5503 for additional information regarding policy.

21.04 - Responsibility

See FSM 5504.

Regional Foresters shall approve and execute all documents for disposition of lands over 10 acres in size under the Small Tracts Act of January 12, 1983, and its amendments. This responsibility cannot be delegated without approval of the Washington Office Director of Lands.
21.05 - Definitions

**Applicant.** A person (see definition of “person” infra, sec. 21.05) who: occupies or has improvements that encroach on National Forest System land under claim of title or color of title; owns land abutting or underlying a road right-of-way; owns land interspersed with or adjacent to mineral survey fractions; seeks a conveyance of National Forest System lands that are physically isolated, inaccessible, or no longer possess National Forest character; or seeks a conveyance of National Forest System lands that are used as a landfill, sewage treatment plant, or a cemetery currently authorized to operate on National Forest System lands.

**Approximately equal value.** A comparative estimate of value of lands, which have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

**Authorized Officer.** A Forest Service Director or Line/Staff Officer who has been delegated the authority and responsibility to make decisions related to selling, exchanging, and/or interchanging all rights, titles, and interests on National Forest System lands.

**Claim of title.** A claim of land as a person's own, based on any reasonable evidence which establishes the person had full title thereto from the time the person obtained ownership of abutting land (also known as title claim).

**Color of title.** Arises from an instrument or writing purporting to convey title or interest in title to a tract of land.

**Encroach.** To enter by gradual steps or to intrude upon the lands, property, or authority of another.

**Encroachments.** Improvements occupied or used on National Forest System land under claim of title or color of title.

**Exchange.** A discretionary, voluntary transaction involving mutual transfers of land or interests in land between the Secretary of Agriculture acting by and through the Forest Service and a non-Federal entity.

**Improvements.** An addition to property costing labor or capital which affects its value. The term generally includes fixtures, structures and attendant facilities, or buildings.

**Interchange.** A land transfer in which the Secretary and another person exchange lands or interests in lands of approximately equal value without a formal appraisal.
Mineral survey fractions. Small parcels of National Forest System lands interspersed with or adjacent to lands transferred out of Federal ownership under the mining laws.

Occupancy. To take or maintain possession of property.

Permanent habitable improvement. A dwelling, house, structure, or other improvement presently being used as a residence or domicile for a lasting or indefinite period.

Person. Includes any non-federal entity such as a state or any political subdivision as well as any individual or business entity.

Regional Attorney. The field office representative of the Office of General Counsel, whether titled Regional Attorney or Attorney in Charge, as used in this handbook.

Secretary. Refers to the Secretary of the United States Department of Agriculture.

Trespass. To enter on another's land or property unlawfully; an illegal act causing injury to the person or to the relative rights of another's property.

21.1 - Land Subject to Conveyance

The Small Tracts Act is not a general disposal authority. It is a relief authority designed to resolve specific title claims, innocent encroachments, and related issues. It also enhances efficiency in administration and management of National Forest System (NFS) lands. All rights, title, or interests, including the mineral estate, of the United States in NFS lands may be sold, exchanged, or interchanged under this Act. Use this authority if the sale or exchange is not practicable under other authorities and all of the following apply:

1. The conveyance meets the qualifying requirements for encroachments (36 CFR 254.32), road rights-of-way (36 CFR 254.33), mineral survey fractions (36 CFR 254.34), or conveyance of parcels 40 acres or less (36 CFR 254.37).

2. The conveyance of the land is in the public interest (36 CFR 254.36), based on consideration of the factors listed below.
   a. Sale, exchange, or interchange of the affected lands is not practicable under any other authority of the Secretary;
   b. Administration and management of National Forest System lands will be more efficient and will result in improved utilization;
   c. Access to and use and enjoyment of National Forest System lands by the general public will not be unduly impeded or restricted;
d. New or extensive inholdings which would create management problems will not be established;

e. Scenic, wildlife, environmental, historical, archaeological, or cultural values will not be substantially affected or impaired;

f. Existence of structures authorized under a special use permit or easement which should be considered for conveyance under this provision, and

g. Applicable Federal, State, and local laws, rules, regulations, and zoning ordinances will not be violated.

3. It complies with the following limitations listed in 36 CFR 254.35, as listed below.

a. Lands within the National Wilderness Preservation System, the National Wild and Scenic Rivers System, the National Trails System, and National Monuments are excluded from any conveyance under these provisions.

b. Lands within National Recreation Areas may not be conveyed by sale under this subpart.

c. The value of Federal lands conveyed in any transaction, pursuant to this subpart, shall not exceed $500,000.

d. Compensation for lands conveyed shall be of at least equal value, or in the case of interchange, of approximately equal value, and may be in the form of land, interest in land (including minerals), or cash, or any combination thereof.

e. The sale, exchange, or interchange of lands or interest in lands under these rules are discretionary and shall be made only if found to be in the public interest.

f. The abutting landowner(s) shall have the first right of acquisition.

g. The area of land conveyed shall be limited to the minimum necessary to resolve encroachment or land management problems.

21.11 - Initiating Transaction

Small Tracts Act transactions may be initiated by:

1. An application (see definition of “applicant” supra, sec. 21.05) by, or the negotiated settlement with, any person who occupies or uses improvements encroaching on NFS land under claim or color of title, or any person who owns land abutting or underlying a road rights-of-way, or who owns land interspersed with or adjacent to mineral survey fractions inextricably connected to such land (sec. 21.2); or
2. The Forest Service initiating a sale, exchange, or interchange based on a land adjustment plan recommendation for conveyance of mineral survey fractions or certain rights-of-way substantially surrounded by lands not owned by the United States (sec. 21.8).

21.12 - General Procedures

The regulations under 36 CFR 254.30 were designed to provide for accepting applications from:

1. Persons seeking conveyance of parcels of 10 acres or less to resolve encroachments on National Forest System Lands whereby:
   a. No advance notice was given that the improvements encroached or would encroach, and
   b. The person(s) in good faith relied on an erroneous survey, title search, or other land description which did not reveal such encroachment.

2. Persons who own land that was inextricably connected with mineral survey fractions or connected with road rights-of-way

3. Persons seeking conveyance of parcels of 10 acres or less encroached on by a permanent habitable improvement for which there is no evidence that the encroachment was intentional or negligent;

4. Persons seeking conveyance of landfills, sewage treatment plants, and cemeteries currently authorized to operate on National Forest System lands; and

5. Persons seeking conveyance of parcels of 40 acres or less that are physically isolated, inaccessible, or no longer possess National Forest character.

The regulations also provide a means for processing discretionary conveyances of certain mineral survey fractions under public sale procedures that would provide for protection of both the United States and other private interest or rights thereto. Use the specific guidelines in this section relative to encroachments, road rights-of-way, and mineral survey fractions, and additional direction may be found under:

1. Section 21.2 for processing applications for encroachments and Forest Service negotiated title claim cases, or

2. Section 21.8 for Forest Service initiated sale, exchange, or interchange of certain mineral survey fractions and road rights-of-way in the absence of an application, and

3. The general direction applicable to all transactions under sections 21.3 through 21.9, and FSH 5509.11, section 13.11.
21.12a - Encroachments

Forest Service officials shall consider the following factors when determining whether to convey lands upon which encroachments exist:

1. The location of the property boundaries based on historical location and continued acceptance and maintenance,
2. Factual evidence of claim of title or color of title,
3. Notice given to persons encroaching on National Forest System lands,
4. Degree of development in the encroached upon area, and
5. Creation of an uneconomic remnant.

Title 36 CFR 254.32 also allows conveyance of parcels that are used as a cemetery (including a parcel of not more than one acre adjacent to the parcel used as a cemetery), a landfill, or a sewage treatment plant under a special use authorization issued or otherwise authorized by a Forest Service official.

Process parcels ten acres or less that are not eligible for conveyance under previous eligibility conditions and are encroached on by a permanent habitable improvement for which there is no evidence that the encroachment was intentional or negligent in response to applications or pursuant to the direction provided in the Forest Land Adjustment Plan.

21.12b - Road Rights-of-Way

Process most road rights-of-way applications under section 21.2. Process certain road rights-of-way for which no applications have been received and which need to be conveyed in the public interest under section 21.8. Consider whether there are multiple owners and many users of a subdivision for properties surrounding a right of way when only one person applies, so that the applicant can address access for other users of the right-of-way.

21.12c - Mineral Survey Fractions

Process mineral survey fraction transactions in response to applications or pursuant to the direction provided in the Forest Land Adjustment Plan.

Use the following as a general guide for processing transactions involving mineral survey fractions:

1. Applications. Process applications received for mineral survey fractions, which have distinguishable occupancy and use bounds related to the private estate of adjacent landowner(s), under section 21.2.
Hold applications received in complex mineral survey fractions areas, which will require land adjustment planning to make prerequisite public interest determinations, until conveyances can be accomplished according to the plan. Refer to section 21.2 to process cases identified as falling under the above type criteria and use section 21.81b to process the conveyance of tracts found suitable for competitive public or restricted sale. Refer to section 21.81 for more detailed information on mineral survey fractions criteria.

2. Forest Service Initiated Transaction. Refer to section 21.8 for processing mineral survey fractions and certain road rights-of-way cases identified as being in the public interest pursuant to land adjustment planning and for which no application has been received.

21.12d – Conveyance of Parcels 40 Acres or Less

Process conveyance of parcels 40 acres or less in response to applications or pursuant to the direction provided in the Forest Land Adjustment Plan. If a parcel is larger than 40 acres, then an exchange should be explored, as the regulations do not provide for division of parcels into smaller qualifying parcels.

In addition to the acreage requirement, eligible parcels must meet one or more of the following categories:

1. The parcel is physically isolated in that it does not adjoin other Federal parcels (for instance, it is wholly surrounded by private lands).
2. The parcel is inaccessible in that it has little or no legal access, whether motorized or non-motorized, nor any plan to develop legal access through acquiring easements or adjacent lands.
3. The parcel no longer possesses National Forest character in that the lands no longer support or contribute to NFS purposes or uses, as defined by the applicable Forest Land Management Plan, or the lands have been altered in such a way as to no longer support or contribute to NFS purposes.

21.2 - Applicant Initiated or Negotiated Transaction

An application requesting conveyance of NFS lands must be in writing (36 CFR 254.40).

Thorough documentation may suffice as a written application for the following categories: encroachments; mineral survey fractions; road rights-of-way; landfills, sewage treatment plants, and cemeteries currently permitted to operate on National Forest System lands; qualifying parcels 40 acres or less; and cases amenable to negotiated settlement. The term “applicant” when used pursuant to this section may apply to any person involved in a negotiated settlement.
21.21 - Attendant Facts

1. An applicant shall provide pertinent title documents such as deeds, title insurance documents, affidavits, or surveys when possible, describing the lands involved in an encroachment, or evidence of title to adjacent lands, or the right of occupancy and use of the tract involving road rights-of-way or mineral survey fractions.

2. The applicant may include copies of affidavits, letters, or statements explaining circumstances, such as any efforts by the original locator or a successor to survey and locate the property boundaries. These documents are also used to verify occupancy and use of the tract in conjunction with the owner’s lands, or as the result of other right of occupancy or use.

3. Use the pertinent parts of FSH 5509.11, sections 12 and 13, along with 21.41, as guidelines to identify and assemble the facts necessary to support the application or negotiated settlement. A copy of these guidelines may be provided to the applicant in a convenient format when needed or requested.

21.22 - Special Considerations Applicable to Encroachment Cases

21.22a - Considerations to Convey Lands

In certain cases for predecessor(s) in title, refer to the factors for consideration under 36 CFR 254.32(c).

21.22b - Developed Subdivisions

1. Apply the degree of development factor, (36 CFR 254.32(c)(4)), to the entire subdivision encroachment area as a unit. The resulting unit determination applies equally to each individual lot owner within the encroaching subdivision unit.

2. Treat an individual lot owner within the subdivision encroachment unit as an abutting landowner under 36 CFR 254.35(f).

21.22c - Boundary Location

In determining property boundary status, consider evidence of surveys conducted to locate property boundaries in accordance with time related local customs and practices and the historic location, acceptance, and maintenance of the boundaries so located.

21.22d - Evaluation of Facts

Use normal title assurance procedures along with FSH 5509.11, sections 12 and 13, as the guide for developing and evaluating the facts and evidence relative to encroachment situations (36 CFR 254.32).
21.23 - Action on Proposal

Upon receipt of an application for transfer of lands or when a title claim settlement is proposed (sec. 13.72), the authorized Forest Service official shall:

1. Assign the case a number for reporting purposes through the Lands Automated Data System (LADS).

2. Review the factual evidence submitted with the application or included in a title claim case.


4. Determine outstanding rights, interests, claims, withdrawal, reservations, special use permits, and other elements of land status which affect the lands. See FSH 5509.12, Land Status Record System (LSRS) for more details establishing LSRS as the official public record evidencing title and jurisdiction for all National Forest System lands. Revocation of withdrawals is not required under the Small Tracts Act.

5. Determine if the conveyance of lands serves the public interest.

6. Negotiate a modification of the proposal or attach conditions to the conveyance if such a change will yield an acceptable conveyance of lands, whenever necessary.

7. Notify the applicant within 30 days of the date of application that the proposal is acceptable (meets the STA requirements) or unacceptable (does not meet the STA requirements). It may be necessary to advise the applicant that a longer period of time will be necessary to review the proposal.

8. Report the final case disposition through LADS.

21.23a - Denial

When an application does not meet the STA requirements, the Forest Service official shall explain in writing, the reasons the proposal did not meet the minimum requirements in sec. 21.1 and is not acceptable.

21.23b - Acceptance

When accepting an application or proposing a title claim settlement, the Forest Service official shall notify the applicant or claimant and provide written instructions (use of a conveyance agreement is optional) for processing the transaction. Provide additional details such as:
1. Description and estimate of reasonable costs of conveyance services to be borne by the applicant.

2. Conditions required in the deed to protect encumbrances such as existing easements or permits and/or Federal occupancy and use.

3. Procurement instructions and standards are needed for:
   a. Title evidence.
   b. Property valuation.
   c. Survey and property description.

4. Closing instructions regarding:
   a. Conveyance document(s).
   b. Payment method and associated costs (FSM 1580.4 and FSH 1509.11).
   c. Recording requirements.

21.3 - Conveyance Costs

The recipient of a conveyance shall bear all reasonable costs of administration, survey, and appraisal incidental to the conveyance as determined by the authorized Forest Service official. Exclude indirect overhead, administrative, or other costs or services associated with internal Forest Service processing of conveyances or other costs or services principally benefiting the United States instead of the applicant.

The Regional Forester may, in limited circumstances, waive conveyance costs. A waiver may be appropriate where evidence is clear that the Federal Government made a mistake in a survey, title search, or other conveyance procedure which resulted in an encroachment.

21.31 - Method of Bearing Costs

Determine for each case the extent of reasonable conveyance costs and the appropriate method that will be required of the recipient of a conveyance to bear those costs.

Consider the following when choosing the appropriate method(s) for the recipient to bear the costs of a conveyance:
1. Recipient performs the required conveyance services under instructions provided by the Forest Service.

2. Recipient voluntarily requests that the Forest Service perform certain services that can in certain cases be mutually agreed to under a collection agreement (FSM 1580.4 and FSH 1509.11). Use this procedure to collect funds or to cover services rendered, only upon approval of the Regional Fiscal Agent.

3. Forest Service performs certain work or services and collects the cost of those services from the recipient.

4. Any combination of the above.

21.32 - Optional Conveyance Agreements

Use a conveyance (sale, exchange, or interchange) agreement as needed to document the terms of a proposed conveyance, such as: financing a survey, appraisal, and/or administrative expenses; compensation for the land conveyed; conditions required in the deed to protect existing or future interest; procurement instructions; and timelines.

The use of and contents of agreements are dependent on the individual circumstances of each case. If used, they may include but are not limited to provisions for:

1. Non-Federal party requesting the Forest Service to accomplish the surveys and/or appraisals under a collection agreement.

2. Non-Federal party providing appraisals or surveys in compliance with written instructions and standards provided by the Forest Service.

3. Forest Service providing a Statement of Approximate Equal Value.


5. Non-Federal party executing road and utility easements.

6. Non-Federal party obtaining or executing waivers for special use permits, grazing permits, and/or mining claims.

7. Non-Federal party providing the required consideration for the lands sold, exchanged, or interchanged.

21.32a - Applicant or Negotiated Transactions
An experienced Realty Specialist may provide guidance for preparing STA conveyance agreements for cases processed under applications and for Forest Service negotiated public sale, exchange or interchange cases.

Optional provisions used for conveyance agreements should be reviewed by an experienced Lands and Realty specialist. Modification of these standard provisions, or drafting of new provisions, may be necessary to address specific circumstances. Structure each conveyance agreement for the individual case at hand.

21.32b - Public Sale Transactions

An experienced Realty Specialist may provide guidance for preparing sale agreements for cases resulting from public sales.

21.4 - Title Approval for Acquisition of Lands

The Department of Justice has established the title standards for the lands to be acquired by the United States: “Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions” (DOJ Title Regulations), which is available on the DOJ website at: https://www.justice.gov/enrd/page/file/922431 of the DOJ Title Regulations, acquisitions by exchange are deemed to be purchases to which the Title Regulations apply.

DOJ has delegated the title review role for Forest Service lands transactions to Office of General Council (OGC).

21.41 - Title Evidence

1. For the last-owner’s search, any acceptable title document may provide evidence of title in accordance with State Bar standards. These include title insurance, certificates of title, attorney certificates or abstracts that either abstract or ensure the last title instrument of record, and any subsequent conveyances or encumbrances affecting title.

2. Title evidence must show all reservations, exceptions, restrictions, limitations or other rights, interests, conditions or liens affecting title before the period of search but disclosed by instruments recorded within the period of search.

21.42 - Standards

1. Observe State and local laws otherwise required for marketability of title.

2. Follow the title standards adopted by the Department of Justice in “Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land
Acquisitions” (DOJ Title Regulations), which is available on the DOJ website at: https://www.justice.gov/enrd/selected-publications.

3. The applicant shall either secure or arrange for the title evidence required by OGC.

4. The Forest Service will handle the actual closing or direct the closing through escrow instructions. Request legal assistance from OGC as needed.

21.5 - Property Valuation

1. The consideration accepted for conveyed lands may be in the form of lands, interest in lands, cash, or any combination thereof (36 CFR 254.35(d)).

2. The value of the consideration accepted in the case of interchange must be approximately equal in value or in the case of a sale or exchange, at least of equal value to the land or interest conveyed (36 CFR 254.42).

3. Valuation is determined by an agency appraiser, or market value is determined through an approved appraisal involving agency appraisers or personnel trained in appraisal waivers.

4. Collected funds must be deposited in the miscellaneous receipts of the Treasury, except for conveyances using 36 CFR 254.32(b) or (d) or 254.37, the net proceeds of which will be deposited in a Sisk Act account.

21.51 - Approximate Equal Value

Refer to 36 CFR 254.42(a), which provides the simplified procedure for determining values for interchanges. Use Approximate Equal Value only for interchange cases. Employees trained in appraisal waivers may prepare a Statement of Approximate Equal Value by comparing and evaluating the elements of value on the lands to be interchanged. Elements of value to consider are size, shape, location, physical attributes, functional utility, proximity of other similar sites, and amenities in the immediate environs of the tracts. The Authorized Officer shall approve the Statement of Approximate Equal Value before the applicant signs it.

21.52 - Equal Value

1. In addition to the requirements in 36 CFR 254.42(b), the qualified appraiser will consider the following factors in determining the sale of parcels when an encroachment area is part of a larger parcel of NFS land:

   a. Use the summary appraisal format to determine the value of the encroached area.
b. Use the size of sales available in the competitive private market area to
determine the size of the larger parcel (adjacent private land and area of NFS
land encroached upon) to be appraised.

c. Estimate the value of the encroachment area as it contributes to the larger
parcel, based upon the typical size of private ownerships in the subject
property’s competitive market area.

2. The "Limiting Conditions and Assumptions" section of appraisal reports for
encroachments must include the following statements:

   a. The valuation process does not include applicant-owned and/or applicant-
      controlled improvements on the encroached area.

   b. The subject property is assumed to be (size of larger parcel; see the preceding
      paragraph 1b) acres in size as determined by market sales and characteristics
      of NFS land adjacent to and including the encroached area.

3. Equal value for mineral survey fractions and road rights-of-way must be determined
by an appraisal of market value.
21.6 - Survey and Property Description

All new surveys, whether metes and bounds surveys or aliquot parts surveys, will be conducted in compliance with 36 CFR 254.43, and must be performed and recorded as specified by either Federal regulations or State laws. Monumentation, marking, and posting are required for all new NFS boundaries resulting from a conveyance including cases where conveyances are based on existing surveys.

21.61 - Standards

Conduct new surveys to standards required by State law. Monument, mark, and post accomplishments to appropriate Forest Service standards. Instructions provided by applicants, must meet Federal standards and must be supplied to private surveyors contracted by applicants.

21.62 - Description Using Existing Surveys

Use existing surveys to describe tracts to be conveyed, whenever possible, as follows:

1. By reference to, or by descriptions derived from, adjoining patented land surveys, such as mineral surveys.

2. By tracts or lots depicted on a survey plat; such as:
   a. Lots 3-6, section 16.
   b. Tract C, Homestead Entry Survey No. 495, sections 18 and 19.

3. By description used to acquire road rights-of-way.

21.63 - Description by Exception in Conveyance Document

Certain rights-of-way and mineral survey fractions are described by the language used in a former patent or deed issued by the United States.

21.64 - Description of Fractions Within Aliquot Parts

Certain parcels of NFS lands within an aliquot part description may be described, for example:

All those mineral survey fractions owned by the United States within the NE 1/4, SW 1/4, section 10. Refer to the legal description verification completed by the Surveyor.
21.7 - Conveyance Document

21.71 - Type of Document

Prepare conveyance documents to or from the United States by drafting a quitclaim or warranty deed and acknowledgement (36 CFR 254.44(a)).

21.72 - State and Local Requirements

Adapt the proposed deed to conform with State and local recording requirements.

21.73 - Delivery

Deliver executed and recorded deeds to the applicant upon receipt of acceptable payment for the lands in cash, land, or interest in lands, or any combination.

21.74 - Recording

Deeds to the United States must be recorded prior to being accepted as payment.

21.75 - Filing and Posting

File a copy of the recorded deed(s) and other title documents in a permanent title file (FSM 5591.2) and update in the Landownership Status Record System (FSM 5590.12).

21.76 - Notice to the Bureau of Land Management

Submit a copy of the recorded deed and survey plat to the Bureau of Land Management (BLM) State Office as needed.

21.8 - Forest Service Initiated Transaction

Use this section as the guide to process the conveyance of mineral survey fractions and certain road rights-of-way identified in the land adjustment plan for conveyance under the Small Tracts Act (36 CFR 254.34).

21.81 - Type of Transaction

In the absence of applications from abutting landowners and after public notice, dispose of qualifying mineral survey fractions or road rights-of-way as needed to resolve management problems through negotiated sale, exchange, or interchange or competitive public sale (36 CFR 254.41).
21.81a - Negotiated Sale, Exchange or Interchange

Use a negotiated sale, exchange, or interchange or any combination thereof when in the opinion of the authorized Forest Service official, the public and private interest and resolution of management problems would be best served by such method. For example, consider the following types of tracts for negotiated sale, exchange, or interchange:

1. Tracts identified as being needed by State, local or other government entities or nonprofit organizations or for other public purposes.
2. Tracts needed by an authorized user to protect the user's interests.
3. Certain tracts, surrounded by non-federal lands without public access, which because of size, shape, and location are not amenable to viable ownership or occupancy and use separate from the abutting non-Federal lands.
4. Tracts with similar or a combination of the preceding type situations that create public and private interests requiring protection from competitive public sale exposure. For example, a developed subdivision with mixed private and local government ownerships, or a ski area complex built on the adjoining private lands.

21.81b - Competitive Public Sale

Use either competitive or restricted competitive public sale based on the following guidelines:

1. Use competitive public sales when competition is likely and there is no overriding need to restrict the competition or make a negotiated sale, exchange, or interchange.
2. Where equitable and fair to existing user(s) or adjoining landowner(s), use a restricted sale as needed to permit them to match, if so desired, high public bid or, if appropriate, limit the number of bidders to affected user(s) or adjoining landowner(s).

21.82 - Analyses

Conduct studies of tracts, individually or within logical project areas, to determine eligibility of the tracts for conveyance under 36 CFR 254.41 and to verify that the conveyance(s) would meet the limitations and public interest requirements of 36 CFR 254.35 and 254.36. Incorporate findings on project areas in the landownership adjustment plan.

Examine all lands eligible for conveyance to identify potential conflicts; such as, mining claims or mineral leases, special uses, Forest Service administrative facilities, cultural resources, threatened and endangered species of plants and animals, or floodplains or wetlands, and other encumbrances.
Identify measures needed to eliminate, resolve, or mitigate adverse impacts such as:

1. Conflicts with mining claims and/or mineral leases.
2. Conflicts with special uses, easements, reservations, and other encumbrances.
3. Continued use or occupancy or suitable alternative location for sites occupied or used by the United States.
4. Impacts on cultural resources in compliance with the National Historic Preservation Act, 36 CFR 800, and the Programmatic Memorandum of Agreement, regarding implementation of the Small Tracts Act approved by the Advisory Council on Historic Preservation, November 2, 1985.
5. Conflicts with the requirements of Executive Order 11988 (floodplains) and Executive Order 11990 (wetlands).
7. Environmental effects of the proposed conveyance and alternatives required by the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 (note)). For categorical exclusions from documentation see FSM 1952.2.

Apply the above listing to assess the factors necessary to determine the appropriate conveyance method(s) for, and the tract(s) to be included in, each case. Provide the necessary supportive background information for negotiating and processing each case by negotiated sale, exchange, or interchange, or by a competitive public sale.

21.83 - Reports

Assemble all relevant data for each transaction into a report summarizing:

1. An accurate description of the tract(s) and tract survey(s), if needed.
2. Appraisal of market value or documentation of approximately equal value for interchange.
3. Tract analyses as outlined in section 21.82.
4. Measures needed to eliminate, resolve, or mitigate adverse impacts and encumbrances.
5. Environmental assessment or categorical exclusion finding (FSM 1952.2).
6. Incidental costs of conveyance:
   a. Conveyance documents,
   b. Boundary survey, and
   c. Appraisal.

7. Recommendations and supporting information for the type of transaction to be conducted.

**21.84 - Procedure**

Based on the preceding criteria, analyses and reports, formalize and process the conveyance transaction beginning with the public notice pursuant to section 21.85. After the public notice, convey the land to: the successful party involved in a negotiated sale, exchange, or interchange or the successful bidder(s) in a competitive public sale proposal. In either case complete the following:

1. Assign a case number for reporting purposes from LADS.

2. Provide procurement instructions and standards when required to show proof of:
   a. Title evidence.
   b. Property valuation.
   c. Survey and property description.

3. Include closing instructions regarding:
   a. Conveyance document(s).
   b. Payment procedures for the reasonable costs associated with the conveyance and for the consideration made for the estate conveyed.
   c. Recording requirements.

4. Report the final case disposition through LADS.

5. General description of the land from the assessment report.

7. Location of detailed information and bid forms for competitive public sale tracts.

### 21.85 - Public Notice

Prepare the public notice of the proposed transaction and have it published in accordance with this section and 36 CFR 254.41(b). The notice must include the following:

1. A legal description of the area(s).

2. Acceptable minimum value based upon the appraisal market value or approximately equal value of each tract.

3. Reasonable costs associated with the conveyance.

4. Conditions of the sale including covenants and restrictions. Also include applicable special conditions such as first right of acquisition by an authorized existing user or occupant or abutting landowner, negotiated sale information, and escrow agreements.

5. General description of the land from the assessment report.


7. Location of detailed information and bid forms for competitive public sale tracts.

Allow a period of 45 to 60 days from the date of the first publication notice to the date for consummating a negotiated transaction or acceptance of bids depending on the type of competitive public sale.

Issue a news release for general circulation. Consider the need for a public meeting to ensure that the public has adequate opportunity to learn about competitive public sale proposals.

### 21.9 - Reporting

Forest Supervisors shall submit individual case information for completed cases to the Regional Forester. Report cases and enter information into the National Lands Automated Data System upon closing.