

# Land Adjustment Overview

This section provides a general overview of land purchase, conservation easements, land donation, access (road and trail) easements, and land exchange tools.

## Fee Simple Land Acquisition

Land acquisition includes the “fee simple” purchase of a parcel of land. “Fee simple” means that one party sells a parcel of land to another party. Fee simple acquisition may also be the result of a donation, with the landowner realizing tax benefits from the donation. A hybrid between an outright purchase and a donation is a below market value sale (“bargain sale”) whereby a portion of the property’s value is donated by the landowner. The value of the gifted portion can be deducted from the donor's federal income taxes. Section 7 of this toolkit provides a list of financial sources to purchase lands.

## Conservation Easement

Conservation easements are another valuable tool to protect critical lands within and adjoining the public lands in Greater Yellowstone. Easements are especially applicable in situations where the landowner is not willing to convey fee title, but the landowner is willing to place an easement on the property.

A conservation easement is a partial interest in real property. In granting a conservation easement, the landowner retains ownership of the property, but conveys certain development rights to another party, usually in perpetuity. The party that holds the easement (whether a public agency or a non-profit conservation organization) has a long-term responsibility to administer and monitor that easement, and to ensure compliance with its terms and conditions. Often the easement is in perpetuity, but some federal programs purchase 99-year or 30-year easements. Examples include the NRCS Healthy Forests Reserve Program, Wetlands Reserve Program, and Grasslands Reserve Program (see Section 7 for more detail).

Each conservation easement is tailored to fit a specific situation and specific parcel of land. Typically the overall purpose of granting a conservation easement is to protect open space, including wildlife habitat, visual quality and traditional land uses such as ranching. Typically, little or no public recreation use is permitted on conservation easement properties.

Conservation easements may be acquired by donation or by purchase. Often, donated easements involve a tax incentive, but in some situations the landowners simply want to see their land protected from development in the future. Usually, easements are completed on the basis of an appraisal of the value of the development rights to be acquired. A qualified appraiser assesses the difference between the fair market value of the property, often using comparable sales, and its restricted value under the easement. The easement is legally recorded in the property deed and therefore “runs with the land” and not with the current owner.

The preference is for qualified (IRS 501-3C) local conservation organizations, such as Montana Land Reliance, Rocky Mountain Elk Foundation and Gallatin Valley Land Trust (GVLT), to hold and administer conservation easements, rather than the federal agency holding the easements. These organizations are better prepared and funded to administer and monitor easements on private lands. The federal agency is generally not funded to administer easements and the agency is not well prepared or organized to do so.

Private landowners in Greater Yellowstone have granted numerous conservation easements to various non-profit conservation organizations and the State of Montana. The Forest Service has played an active role in referring landowners to the appropriate conservation groups, and in supporting the grant of easements. Two examples of such conservation easements:

- Black Butte Ranch (Patten family to GVLT) in the upper Gallatin Canyon
- Trapper's Cabin Ranch (Martin family to GVLT) in the Taylor Fork

The "Purchase of Development Rights (PDR)" is very similar to a conservation easement, in that a PDR program compensates landowners for voluntarily limiting future development of their land, while retaining full ownership. Usually rights to continued farming, ranching or forestry are retained by the landowner.

Further resources are:

A number of conservation easement publications are available for purchase at the Land Trust Alliance website, including *The Conservation Easement Handbook* by the Trust for Public Land and the Land Trust Reliance. The 1988 version was revised in 2005 to include new guidance specifically for public agency program staff working with conservation easements.

<http://iweb.lta.org/Purchase/CatalogSearchResults.aspx?Option=2&Topic=Conservation+Easements>

The Nature Conservancy website:

<http://www.nature.org/aboutus/howwework/conservationmethods/privatelands/conservationeasements/>

Section 7 of this toolkit provides a number of financial sources to acquire easements. Map 3 in the maps section displays the existing easements and preserves in the GYA.

## **Donation**

As discussed above for fee simple and easement acquisition, landowners sometime donate land, a portion of a parcel's value, or easements to a State, Tribal, or local government or nongovernmental organization, and typically realize tax benefits for the donation.

## Land Exchange

### Land for Land Exchange

Federal agencies use land exchange for a number of purposes, including consolidating public land, simplifying federal land boundary management, and acquisition of important resource lands. Simply, the agency trades public land for private land (or other governmental land). The exchange is based on the property value, not the acreage of the lands to be traded. Often exchanges do not result in an acre for acre trade. For example, fewer acres of land with mature timber could be traded for more acres with younger trees, because the mature trees are more valuable. The value of the both the public and private lands are appraised, and where values do not closely match, the federal government may use some appropriated funds to equalize values. In some cases, the private party may donate a portion of its land value either to the government or to a third party, such as a land trust. The agencies follow detailed requirements, including an environmental assessment of the land to leave public ownership.

The National Forests in the Greater Yellowstone area contain many thousands of acres of intermingled private lands, due to the past railroad grants, homesteading laws and mining patents. In today's real estate market, nearly all of the private land inholdings are considered valuable (and vulnerable) to permanent development. In the Greater Yellowstone, and particularly in Montana, land exchanges are a widely-used and effective tool to help federal land managers acquire and consolidate key tracts of private land, to protect wildlife and fish habitat, wilderness, recreational opportunities, wetlands and riparian areas, and improve legal access and long term management effectiveness. Potential land exchanges must be carefully designed to protect key resources and public values and to improve public access to NFS lands.

Large and complex land exchanges may be legislated by Congress. However, most land exchanges are done through the normal agency administrative process. Under current regulations and policies, considerable time and expense is required to complete the land exchange process, including National Environmental Policy Act (NEPA) requirements, public involvement, land surveys, appraisals and title reviews. On average, a land exchange proposal may take three to five years to complete, and it may cost \$50,000 to \$100,000 to complete the process. Typically, the costs are shared with the landowner. Given the time and expense, any land exchange proposal must be carefully evaluated early in the process to ensure that it is truly in the public interest and worth the investment.

### Land for Timber Exchange – Forest Service

The U.S. Forest Service has the ability to exchange timber for land. A land-for-timber exchange involves the acquisition of non-Federal land, or interests in land, in exchange for National Forest timber. Land-for-timber exchanges can be either bipartite or tripartite exchanges.

#### **Bipartite Land Exchange**

In a bipartite exchange, the United States grants the right to cut National Forest timber in exchange for non-Federal land or interest in land. There are two methods; in the first the non-Federal landowner purchases an existing National Forest timber sale. The Forest Service may

then use receipts from the timber sale to acquire land the timber sale purchaser owns. The second method, “direct cutting right” gives the non-Federal landowner the right to harvest National Forest timber outside the competitive timber sale process.

### **Tripartite Land Exchange**

A tripartite Land Exchange uses federal timber receipts to purchase lands adjacent to National Forests. A tripartite exchange may be used when the non-Federal landowner is unable to harvest or use the timber harvested from Federal lands. A tripartite exchange involves three parties: the United States, a non-Federal landowner, and a timber sale contractor. The contractor pays for and cuts the timber under a timber sale contract. Funding for a tripartite exchange from a timber sale can occur only after satisfaction of National Forest Fund deposits, Knutsen-Vandenberg collections, and Salvage Sale Fund requirements. Any receipts remaining in the land exchange suspense account after closing of a tripartite exchange shall be deposited in the National Forest Fund.

Land for timber exchanges are seldom used in the GYA. It can be difficult to collect enough in timber sale receipts to fund a tripartite land exchange, given fluctuating timber prices and/or legal challenges to a federal timber harvest

### **Access Easements and Dedicated Public Access**

Having reasonable access to use and enjoy the public lands in the Greater Yellowstone area is of high interest to the public lands visitor. For managers of these public lands, it is vitally important to secure public road and trail access rights (easements) to the existing public lands, and it is equally important to protect and maintain the existing access rights.

The primary tools and methods available for potential use by land managers to secure and protect access rights to the federal lands are summarized below:

#### **1. Direct Negotiations with Landowners to Secure Easements:**

Federal land managers can negotiate directly with landowners to secure permanent road and trail easements. Easements may be purchased or donated. Neighboring landowners are often less willing to consider granting public access today than they were in the past.

#### **2. Land Exchange with Access Provisions:**

Access needs can often be addressed effectively through land exchanges. In planning and negotiating land exchanges, managers should look for opportunities to resolve access needs. In evaluating exchange proposals received from landowners or third parties, agencies should consider giving priority to those exchanges that help resolve access needs. Since the non-Federal exchange partner will receive benefits from the exchange, exchange partners are often more willing to build access provisions into the overall exchange agreement.

When considering an exchange of federal lands, carefully evaluate the effects on future access to remaining public lands. Whenever appropriate, reserve perpetual road and trail easements (access rights) in the patents or deeds that convey the federal lands to the exchange proponent.

### 3. Reciprocity (Exchange of Access Rights):

“Reciprocity” is authorized under FLPMA (P.L. 94-579, 90 Stat. 2743, as amended). Forest Service regulations at 36 CFR 251.63 state in part:

*“If it is determined that a right-of-way shall be needed by the United States across non-federal land...the authorized officer may condition a special use authorization to require the holder to grant the United States the needed right-of-way.”*

Forest Service policy is to be consistent and reasonable in the use of Reciprocity. The reciprocal rights should be in the same geographic vicinity. The access rights should be substantially similar in value. In the past three decades, the Forest Service has conditioned many special use permits and easement grants to private landowners with reciprocal rights provisions. Reciprocity has enabled the acquisition of a wide range of road and trail easements needed to effectively manage intermingled public lands.

### 4. Cooperative Agreements:

Cooperative Agreements are used by the federal agencies to provide access across lands managed by other federal, state, county and municipal governments.

### 5. Subdivision Review Process:

To ensure that access rights to federal lands are addressed, public land managers can participate and cooperate with counties in the subdivision review process. Residential developments in the urban interface often impact access to intermingled public lands. Strong cooperation with states and counties can help ensure that any existing access roads and trails are protected and maintained, and also that suitable roads and trails are dedicated for public use in the subdivision review process.

### 6. Land Purchase:

The purchase of land in fee can be a very effective tool to improve public recreational opportunities, provided that funding is available. In negotiating purchase projects, carefully consider long-term access needs. Be opportunistic in designing purchases to conserve critical lands while also improving public and administrative access.

### 7. Establish Historic Use Rights

Although used less frequently, this approach is effective in certain situations. This method is applied where it is believed that an historic public access route exists to public lands, but the route may be contested or closed by a landowner. Considering the historic development of road systems, public rights to use a road or trail may be established by RS 2477, by prescription, by appropriation, or by similar means.

The federal land manager should work cooperatively with counties and with public groups to try to resolve these situations. The counties or public groups may take the lead in some cases. The goal is either (a) to establish (prove through negotiation or legal means) that access rights exist, or (b) to defend the public rights of access on existing routes. Careful and extensive research and compilation of records is often involved. Each case is different and must stand on its own merits. The process often takes several years and substantial efforts to resolve.

Sources:

The Greater Yellowstone Coalition, *Tools for Managing Growth in the Greater Yellowstone Area* (undated).

The Nature Conservancy

<http://www.nature.org/aboutus/howwework/conservationmethods/privatelands/conservationeasements/>

Forest Service Handbook 5409.13, Chapter 30 (Land Exchanges).

Robert Dennee, Gallatin National Forest, prepared the section on Access Easements, and contributed to other portions of this toolkit section.