

Appendix J - Land Tenure Adjustment Criteria and Legal Requirements

The Land Tenure Maps for the various alternatives depict three zones that identify public land with potential for land tenure adjustments (e.g., acquisition or disposal), consistent with existing regulations and BLM policy. Section 102(a)(1) of the FLPMA provides that “. . . the public lands be retained in federal ownership unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest . . .” In addition, Section 113(g) of the Steens Mountain Cooperative Management and Protection Act of 2000 provides additional limitations on disposals of land within the CMPA boundary by withdrawing “from all forms of entry, appropriation, or disposal under the public land laws, except in the case of land exchanges if the Secretary determines that the exchange furthers the purposes and objectives specified in Section 102” General management guidelines for each zone are described below Specific direction for each Zone is contained within the description of each alternative.

Zone 1: Retention/Acquisition (Includes Zone 1, 1A, and 1B)

Zone 1 land has been generally identified for retention in public ownership. These are also areas where emphasis will be placed on acquisition of land containing high resource values through such methods as exchange, purchase, donation, or public agency jurisdictional transfers. Zone 1 land may contain significant visual, wildlife, watershed, vegetative, cultural, and other resource values and are generally well blocked. Exchange, and, in some cases, sales of Zone 1 lands may be considered in some alternatives for community expansion, public purposes and to resolve long term inadvertent unauthorized use.

Zone 2: Exchange Zone (Includes Zones 2 and 2A)

Zone 2 land has been identified generally for retention but may be exchanged for lands in other zones (depending upon the alternative) for nonfederal land with high resource values. Zone 2 public land generally includes well-blocked or fragmented BLM administered lands outside of Zone 1. Generally, Zone 2 lands possess relatively lower resource values than are present in Zone 1. These are areas where, dependent upon the alternative, exchanges, purchases, donations, or public agency jurisdictional transfers may be used to acquire nonpublic land containing high resource values and to create consolidated public land areas. Sales of Zone 2 lands may be considered in some alternatives for community expansion, public purposes, and to resolve long-term inadvertent unauthorized use.

Zone 3: Disposal

Zone 3 land generally has low or unknown resource values and meets the disposal criteria of Section 203 of the FLPMA. This land is potentially suitable for disposal by such methods as public agency jurisdictional transfers, or state indemnity selection (state in lieu election), or R&PP lease or patent, exchange, or sale unless significant recreation, wildlife, watershed, special status species, cultural resources, or other high resource values are identified as a result of site specific analysis. This zone may include land needed for community expansion, small parcels located adjacent to private inholdings within and/or adjacent to large blocks of public land being retained by the BLM, parcels on which unauthorized use exists, and land included within survey hiatus. Zone 3 land may be exchanged for land with greater resource values in Zones 1 and 2.

The FLPMA and other federal laws, Executive Orders and policies suggest criteria for use in categorizing public land for retention or disposal, and for identifying acquisition priorities. This list is not considered all inclusive, but represents the major factors to be evaluated. They include the following:

- Wild horse HMAs.
- Threatened or endangered or sensitive plant and animals species habitat.
- Areas containing scientific value (e.g., RNAs).
- Riparian areas, wetlands, designated floodplains.
- Fish habitat.
- Nesting/breeding habitat for game animals.
- Key big game seasonal habitat.
- Developed recreation sites and recreation access.
- VRM.
- Energy and mineral potential.
- Significant cultural resources and sites eligible for inclusion on the National Register of Historic Places.
- Wilderness and areas being studied for wilderness.
- Accessibility of the land for public uses.

- Amount of public investments in facilities or improvements and the potential for recovering those investments.
- Difficulty or cost of administration (manageability).
- Suitability of the land for management by another federal agency.
- Significance of the decision in stabilizing business, social and economic conditions, and/or lifestyles.
- Whether private sites exist for the proposed use.
- Encumbrances, including but not limited to withdrawals, or existing leases or permits.
- Consistency with cooperative agreements and plans or policies of other agencies.
- Suitability (need for change in landownership or use) for purposes including but not limited to community expansion or economic development, such as industrial, residential or agricultural (other than grazing development).
- Existing landownership patterns.

The criteria identified above will be among those considered in inventory, review and analyses prepared for specific land tenure adjustment proposals following plan implementation. Minor adjustments involving sales or exchanges or both may be permitted based on site specific application of this adjustment criteria.

The FLPMA provides that a tract of public land may be disposed of by exchange provided that the public interest will be well served by making that exchange To be considered to be in the public interest, exchanges must:

- facilitate access to public land and resources, or
- maintain or improve important public values and uses,
- maintain or improve local social and economic conditions; and
- facilitate implementation of other goals and objectives of the RMP.

The FLPMA also prescribes that the values and objectives which the federal lands may serve if retained in federal ownership are not more than the values of the nonfederal lands and the public objectives they could serve if acquired Further, the CMPA provides that exchanges of land within the CMPA must further the purpose and objectives specified in Section 102 of the Act.

Direct purchases of nonfederal lands may be used when the same public interest criteria apply as described for land exchanges above.

Public lands or tracts to be sold must meet the following disposal criteria stated in the FLPMA:

“such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another federal department or agency; or such tract was acquired for a specific purpose and the tract is no longer required for that or any other federal purpose; or disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in federal ownership.”

Generally, exchanges are the preferred method of disposal but sales will be utilized when: it is required by national policy; or it is required to achieve disposal objectives on a timely basis, and where disposal through exchange would cause unacceptable delays; or disposal through exchange is not feasible.

The preferred method of selling public land will be by competitive bidding at public auction to qualifying purchasers. However, modified competitive bidding procedures may be used when there is no legal public access to a tract, when necessary to avoid jeopardizing an existing use on adjacent land, or to avoid dislocation of existing public land users.

Public land may be sold by direct sale at fair market value when:

- such land is needed by state or local governments; or
- direct sale is needed to protect equities arising from authorized use; or
- direct sale is needed to protect equities resulting from inadvertent, unauthorized use; or
- there is only one adjacent landowner and no public access.

Current BLM Washington Office interpretation of the Land and Water Conservation Act prohibits the disposal of land acquired with Land and Water Conservation Funds by sale or exchange.

Current policy prescribes general priorities for implementing land disposal actions. These actions include the following:

- A. BLM and other federal jurisdictional transfers.
- B. Transfers to state and local agencies (e.g., R&PP patents, in-lieu selections, airport patents).
- C. State exchanges.
- D. Private exchanges.
- E. Sales.
- F. American Indian allotments.
- G. Desert land entries.

Site specific environmental review and documentation in conformance with NEPA, including completion of categorical exclusions and plan conformance determinations where appropriate, will be accomplished for each proposed land program action. Interdisciplinary impact analysis will be tiered within the framework of this and other applicable environmental documents.

Many of the foregoing provisions of this appendix are based upon current policy. Future shifts in policy and national priorities may result in modifications of these provisions and changes in addressing priority lands actions.

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