

Taylor Hills Land Exchange

Amended Decision Notice

**Lewis and Clark National Forest
White Sulphur Springs Ranger District
Meagher County, Montana**

April 2009

Lead Agency:

USDA Forest Service
Northern Region
Lewis and Clark National Forest
White Sulphur Springs Ranger District

Responsible Official:

Lesley W. Thompson
Forest Supervisor

For Further Information, Contact:

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District Ranger
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Lewis and Clark National Forest
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This Amended Decision Notice amends my October 2008 decision for the Taylor Hills Land Exchange with Zehntner Brothers, LLC (Zehntner) because of a changed circumstance. The Proposed Action was described in the Environmental Assessment (EA) for Taylor Hills Land Exchange issued in August 2008. The lands and roads involved are located in the Tenderfoot Creek area northwest of White Sulphur Springs, Montana. All lands are in Meagher County.

In October 2008, I decided to implement Alternative 1 as displayed and analyzed in the EA and finding of no significant impact. Since the decision was made, the exchange proponent has stated he is not willing to grant ROWs on Roads Nos. 6424 and 6372, located within Section 30, T14N, R5E. In light of these changes, a review of changed circumstances was conducted in accordance with direction at FSH 1909.15 section 18.1 and 18.4, and the results of that review were documented. That review indicated there were no environmental concerns resulting from the changed circumstances that had bearing on the action or its impacts. I have decided, however, to amend my earlier decision to better document those actions that will now take place.

In my previous decision, I decided to do the following:

- Convey fee title (surface and mineral estate) to 158.83 acres of National Forest System (NFS) lands located in Section 30, Lots 16, 18, 19 and 20; and Section 32, Lots 1, 2 NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, T14N, R5E.
- Acquire fee title (surface and mineral estate) to the 151.52 acres Taylor Hills HES 185, located in Sections 13 and 14, T14N, R5E and Sections 18 and 19, T14N, R6E.
- Acquire a 20 foot wide trail right-of-way easement on Tenderfoot Creek NFS Trail No. 342 and Bald Hills NFS Trail No. 345 located within Sections 19 and 30, T14N, R5E, and Sections 24 and 25, T14N, R4E
- Acquire one water right in HES 185 for stock use at the rate of 10 gallons per minute (gpm) and total annual volume of 2 acre-feet, with a priority date of December 31, 1917.
- Reserve a 447 feet of public road right-of-way easement, 66 feet wide, on existing NFS Road No. 6424, located in Section 30, Government Lot 18, as part of the conveyance of Lot 18 to Zehntner, thereby retaining public road RIGHT-OF-WAY to Tenderfoot Creek.

Due to changed circumstances, I am amending my decision to reflect that the United States will **not** acquire the following:

- Road right-of-way easements on the South Fork Tenderfoot NFS Road No. 6424 and Tenderfoot NFS Road No. 6372;
- Bridge crossing right-of-way easement on an existing bridge at the terminus of Tenderfoot NFS Road No. 6372.

In addition, the Forest Service will **not** grant the following:

- Road right-of-way easements to Zehntner on NFS Road Nos. 6424 and 6372 and NFS Trail No. 342, which currently allow access into their private in-holdings for agricultural purposes.

Because Zehntner will not now grant legal public over and across their private land to access portions of NFS lands, through this amended decision I am deciding to:

- ✓ Reserve a public road right-of-way easement, 66 feet wide, on existing road identified as NFS Road No. 6424029, located in Section 30, Government Lot 20, as part of the conveyance of Lot 20 to Zehntner, thereby retaining needed public road right-of-way.

The Federal and non-Federal lands identified for exchange were appraised and an amended technical appraisal review to consider the changed estate was completed by C. Kim Zier, Review Appraiser – Region 1. The amended technical appraisal review stated the current estimated market value of the non-Federal lands identified for exchange, which in total consists of 151.52 acres, is \$380,000. The current estimated market value of the Federal lands, which in total consists of 158.83 acres, is \$358,000. The exchange will be completed on the basis of equal market values. The United States will pay the non-Federal party \$22,000 equalization payment as allowed by 36 CFR 254.12.

DETERMINATION OF PUBLIC INTEREST

As required in 36 CFR 254.3(b), I have determined the public interest is still well served through this exchange with changed circumstance as summarized below.

The resource values and public objectives served by the acquired non-Federal lands equal or exceed the resource values and the public objectives served by the conveyed Federal lands. The specific purpose of this land exchange is to maintain wildland values and roadless characteristics of the Tenderfoot-Deep Creek Inventoried Roadless Area; maintain high quality wildlife habitat; maintain undisturbed watersheds downslope in the Tenderfoot Creek for Westslope cutthroat trout habitat, a sensitive species; and acquire needed public access into South Fork of Tenderfoot Creek and in the Tenderfoot areas; as well as to consolidate NFS and private lands providing for more efficient management of these lands. This exchange would resolve uncertainties concerning public and administrative access as well as acquiring land within a roadless area with high quality wildlife habitat for lynx.

RATIONALE FOR THE DECISION

In 2008, the Forest Service and conservation partners began the process to acquire a large portion of private land south and west of Zehntner Brothers HES 668. Road No. 6242029, called the Tenderfoot-Bair Road, crosses this property and was used to log the property in the 1990's. A field inspection determined that this road could be a better long term access route to NFS land west of Zehntner Brothers HES 668 than access identified in the earlier decision (which the exchange proponent will no longer grant). Under this amended decision, the Forest Service is reserving a public right-of-way easement on a portion of this route as part of the conveyance of Lot 20 to Zehntner.

Because of this action, not acquiring the road access identified in the previous decision at this time is not critical. I feel it is in the best interest of the public to proceed with the land exchange based on the determination of public interest for the land exchange itself and the other actions identified in this amended Decision Notice.

This decision is based on the review of the EA for the Taylor Hills Land Exchange (August 2008), and documentation provided in the Section 18.1 and 18.4 review memorandum dated March 2009.

The responsible official for this decision is the Forest Supervisor of the Lewis and Clark National Forest, whose authority is delegated by the Forest Service, Northern Region, Director of Recreation, Minerals, Lands, Heritage, and Wilderness, whose authority is delegated by the Regional Forester.

The scope of my decision is limited to the actions described in this Amended Decision Notice. The decision reached at the conclusion of this analysis would be effective upon completion of the formal land exchange process.

FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

This decision meets all Federal and State laws, regulations and policies, including Lewis and Clark National Forest Plan direction. NFS lands to be conveyed are within Management Area F which emphasizes dispersed recreation, with a recreation setting identified as semi-primitive motorized, reflecting that motorized trails traverse this management area. With the acquisition and reservation of right-of-ways for trails and roads dispersed recreation may still occur in this area. Private lands to be acquired would be Management Area F as well.

My decision is consistent with the Forest Plan goals and objectives as described in the EA on page III-1. The EA also documents compliance with laws and regulations governing management of Threatened, Endangered and Sensitive Species (EA, pages IV-4, 5, 7, 10, and Appendix A) as well as Forest Service Management Indicator Species (EA pages IV-10 through 14). My decision is consistent with Executive Orders related to wetlands and floodplains (EA, pages IV-15 through 16, and Appendix B) and the National Historic Preservation Act (EA page IV-16).

As required in 36 CFR 254.3(b), and documented in the EA on pages I-6 and 7, I have determined the public interest is well served through this exchange as described in this decision.

I reviewed the project for compliance with the Environmental Justice Executive Order. I find this decision will not adversely affect human health or minority and low-income populations. There has been ample opportunity for participation in the analysis process, as documented in the public involvement records in the project record, and the implementation of this project will not subject anyone to discrimination because of race, color or national origin.

IMPLEMENTATION OF DECISION

If no appeal is received, implementation of this decision may occur on, but not before, five (5) business days from the close of the appeal period. If an appeal is received, implementation may not occur for 15 days following the date of appeal disposition.

ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

This decision is subject to appeal pursuant to 36 CFR 215.11(a). A written appeal must be submitted within 45 days following the publication date of the legal notice of this decision in the Great Falls Tribune, Great Falls, Montana. It is the responsibility of the appellant to ensure their appeal is received in a timely manner. The publication date of the legal notice of the decision in the

newspaper of record is the *exclusive* means for calculating the time to file an appeal. Appellants should not rely on date or timeframe information provided by any other source.

Paper appeals must be submitted to: USDA Forest Service, Northern Region, ATTN: Appeal Deciding Officer, P.O. Box 7669, Missoula, MT 59807; or USDA Forest Service, Northern Region, ATTN: Appeal Deciding Officer, 200 East Broadway, Missoula, MT 59802. Office hours: 7:30 a.m. to 4:00 p.m. Fax (406) 329- 3411.

Electronic appeals must be submitted to: appeals-northern-regional-office@fs.fed.us. In electronic appeals, the subject line should contain the name of the project being appealed. An automated response will confirm your electronic appeal has been received. Electronic appeals must be submitted in MS Word, Word Perfect, or Rich Text Format (RTF).

It is the appellant's responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why the decision should be reversed. The appeal must be filed with the Appeal Deciding Officer in writing. At a minimum, the appeal must meet the content requirements of 36 CFR 215.14, and include the following information:

- The appellant's name and address, with a telephone number, if available;
- A signature, or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);
- When multiple names are listed on an appeal, identification of the lead appellant and verification of the identity of the lead appellant upon request;
- The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;
- The regulation under which the appeal is being filed, when there is an option to appeal under either 36 CFR 215 or 36 CFR 251, subpart C;
- Any specific change(s) in the decision that the appellant seeks and rationale for those changes;
- Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;
- Why the appellant believes the Responsible Official's decision failed to consider the substantive comments; and
- How the appellant believes the decision specifically violates law, regulation, or policy.

If an appeal is received on this project, there may be informal resolution meetings and/or conference calls between the Responsible Official and the appellant. These discussions would take place within 15 days after the closing date for filing an appeal. All such meetings are open to the public. If you are interested in attending any informal resolution discussion, please contact the Responsible Official or monitor the website for postings about current appeals in the Northern Region of the Forest Service: http://www.fs.fed.us/r1/projects/appeal_index.shtml.

If no appeal is received, implementation of this decision may occur on, but not before, five business days from the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 days following the date of appeal disposition.

CONTACT PERSON

Detailed records of the environmental analysis are available for public review at the White Sulphur Springs Ranger District Office, 204 West Folsum, Box A, White Sulphur Springs, MT 69645, telephone number (406) 547-3361. For additional information on the Forest Service appeals process, contact Robin Strathy, Lewis and Clark National Forest, 1101 15th Street North, Great Falls, Montana 59403.

SIGNATURE AND DATE


LESLEY W. THOMPSON
Forest Supervisor
Lewis and Clark National Forest


Date

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Appendix A

