

Land Donations Under Section 6(a) of the Wilderness Act: Best Management Practices for (and Description of) the Process

PURPOSE

This paper lays out the steps needed to process a proposal to donate land adjacent to but outside the boundary of a wilderness area. This document also describes the components that comprise a donation packet and presents some Best Management Practices (BMPs) for a Field Office that is undertaking the donation process.

A description of the donation process is necessary to ensure that the BLM: 1) only considers for acceptance donated lands that would be compatible with management as wilderness; 2) responds in a timely manner to the prospective donor and manages the donation process efficiently; and, 3) takes the required realty actions.

AUTHORITY

Section 6(a) of the Wilderness Act authorizes the Secretary to accept gifts or bequests of land wholly within designated wilderness areas. A gift or bequest of this kind automatically becomes part of the wilderness area. The Secretary may also accept gifts or bequests of land adjacent to designated wilderness "if he has given sixty days advance notice thereof to the President of the Senate and the Speaker of the House of Representatives." 16 U.S.C. 1135(a). See BLM Manual 6340, 1.6. C. 9. c. ii. This paper addresses the process of accepting the donation of land adjacent to a wilderness area, sometimes referred to as an "edgeholding".

DONATION PROCESS

- 1) Donor contacts Field Manager with verbal offer to donate land for addition to wilderness
 - Donor contacts Field Manager with intent to purchase property and donate, or;
 - Donor currently owns land and contacts Field Manager with intent to donate.
- 2) BLM Field Office completes, with landowner participation, a Wilderness Compatibility Evaluation.¹
- 3) BLM Field Office concludes property is or is not compatible with management as wilderness (in part or in whole), Field Office recommends whether Field Manager should accept the donation.
- 4) If property is not owned by donor, donor purchases property.
- 5) Donor provides Field Manager with written offer to donate
 - Offer is on donor letterhead and describes the property and any terms and conditions.
- 6) BLM requests from the donor:
 - Donor Certification Form (DI-3680)
 - Written permission to enter property for reconnaissance and survey as needed

- Title documents
 - Owner’s Deed
 - Commitment for Title Insurance on the American Land Title Association (ALTA) U.S. policy form (revised 12-3-12).
- 7) BLM completes BLM Checklist to Determine Appropriateness of Donation (BLM Manual 1105, Appendix 1). If any of the acceptance factors on the checklist are identified as “yes” or “maybe,” the BLM must consult the Solicitor for guidance as to whether to proceed. If all answers are “no,” the State Director signs the form to proceed.
- 8) BLM conducts initial inspection of property (Certificate of Inspection and Possession). BLM makes preliminary evaluation and provides written response to the potential donor. This can occur prior to removal of any non-conforming structures or installations. Document what is present, and which things will be removed before transfer of the property.
- 9) BLM and donor strategize pre-donation details. Examples may include²:
- Removal of structures or installations from the property
 - Identification of access routes across adjoining property
 - Identification of areas to be excluded from the donation and agreement regarding their disposition.
- 10) Notification process and acquisition process (steps should take place concurrently).

Sub-step	Notification Process	Acquisition Process
A	Field Office prepares briefing paper	Field Office establishes casefile, obtains serial number, and enters it into LR2000
B	Field Office prepares donation packet: <ul style="list-style-type: none"> • Briefing paper³ • Wilderness Compatibility Evaluation • Donor letter • Donor Certification Form • BLM Checklist to Determine Appropriateness of Donation 	State Office examines adequacy of legal description
C	Field Office and District Office prepare transmittal memos <ul style="list-style-type: none"> • Field Mgr. to District Mgr. (DM) • DM to State Director (SD) 	Field Solicitor reviews title and draft warranty deed
D	State Office prepares draft transmittal letters <ul style="list-style-type: none"> • SD to BLM Director • Secretary to President of Senate • Secretary to Speaker of House 	Field Office prepares NEPA analysis
E	Notification Packet. State Office enters record into DTS, sends to WO-400 for	Field Office completes Environmental Site Assessment

	<p>surnaming. Routing should also include WO-300, SOL, and WO-100. After each of the above offices has surnamed, route the record back to WO-400.</p> <ul style="list-style-type: none"> • Correspondence summary with transmittal memos • Donation packet • Both draft transmittal letters 	
Sub-step	Notification Process	Acquisition Process
G	State Office gives notification to the WO-410 Division Chief, who will assign a staff person to shepherd the packet through the process and DTS.	Field Office informs donor of right to an appraisal (donor can waive that right in writing)
H	AD-400 notifies Assistant Secretary for Lands and Minerals Management of packet.	Field Office renews Environmental Site Assessment if previous assessment has expired

- 11) Provide at least 60 days’ notice from the date of Congressional notification and ensure NEPA compliance has occurred.
- 12) Prepare escrow and closing instructions.
- 13) Prepare Land Acquisition Voucher Certificate (Form 1340-32), to obligate and request disbursement of funds (closing). Entry from this form to the Federal Financial System to obligate funds is made by the designated Field or State Office remote data entry person.
- 14) Complete Certificate of Inspection and Possession just prior to closing or recording deed.
- 15) Record Title - Obtain final title evidence on U.S. ALTA policy form (revised 12-3-12). Obtain Solicitor final title opinion.
- 16) Document in appropriate Wilderness and Realty serialized case files, update GIS, and update LR2000.

Notes

1. *A Wilderness Compatibility Evaluation differs from a wilderness inventory in two important ways:*
 - *A wilderness inventory is used to determine if federal land currently has wilderness characteristics.*
 - *A Wilderness Compatibility Evaluation is used to determine whether a parcel of private land, at the request of a landowner interested in donation, could be managed as wilderness if it were donated.*

Certain factors important to a wilderness inventory are not relevant to a Wilderness Compatibility Evaluation.

- *For example, the wilderness inventory characteristic of “naturalness” is defined as an area that “must appear to have been affected primarily by the forces of nature, and any work of human beings must be substantially unnoticeable” (Manual 6310—Conducting Wilderness Characteristics Inventory on BLM Lands (2012)). The presence of the “work of human beings” (i.e., structures, installations, or roads) may cause BLM to determine that an area of federal land does not have wilderness characteristics. By contrast, in the case of a donation of private land, such features can be identified for removal from the property (before or after donation), thus making it compatible with the “Undeveloped” quality of wilderness character and compatible with a wilderness designation. Under a Wilderness Compatibility Evaluation, BLM does not apply the “naturalness” criteria used in a wilderness inventory of federal lands. Instead, the BLM determines if the property can be managed under the wilderness character quality of “Natural.” This quality is defined as “wilderness ecological systems are substantially free from the effects of modern civilization” (Keeping It Wild 2 – USDA Forest Service RMRS-GTR-340 (2015)). A Wilderness Compatibility Evaluation identifies if the property has so departed from a natural ecosystem (e.g., severely infested by noxious weeds), that the federal government could not effectively manage the property as Natural (i.e., the government would incur unreasonable expenditures of labor and budget in trying to do so).*

Conversely, some factors important to a Wilderness Compatibility Evaluation are not considered during a wilderness inventory.

- *For example, a wilderness inventory does not consider private mineral estate ownership; it only considers if the surface currently has wilderness characteristics. It is important to evaluate the presence—and the likelihood of development—of private mineral estate to determine if the federal government would be able to manage a donated property as wilderness, or if such management would likely be unfeasible because of future mineral development. Managing a property under mineral development could require significant expenditures of labor and budget in order to prevent unnecessary or undue degradation of the surface, while nevertheless losing the area’s wilderness character.*

A Wilderness Compatibility Evaluation includes the following elements:

- *The property’s location, size, county, Congressional District, and BLM Field Office.*
- *Confirmation of the property’s unseparated adjacency to a Congressionally designated wilderness area (it must share a common boundary with a wilderness, in other words).*
- *Description of the area’s Undeveloped condition: that is, if it is essentially without structures or installations (including roads), third-party-owned inholdings, or property encumbrances that would allow for commercial or other activities that would result in future structures or installations. Where such conditions exist, include an explanation of their severity and whether these conditions can be removed or adequately remediated in order for the property to be managed as wilderness.*
- *Description of the property’s Natural condition: that is, whether ecological systems are substantially free from the effects of modern civilization. Where impacts to this condition occur, describe their severity, and the degree of future investment needed to address those impacts.*
- *Description of the area’s Outstanding Opportunities for Solitude or Primitive and Unconfined Recreation. The property need not contain these opportunities to be added to the Wilderness, but the land may have such significant value under this quality (e.g., providing access within a canyon that is only partially protected by wilderness) that it is highly important to acquire the property to safeguard recreational use, even if the property is found to have remediation needs in one of the other qualities.*

- *Describe if the property contains Other Features of Value. It is not necessary for the property to contain these conditions to be added to the Wilderness, but the property may have such significant value under this quality (e.g., including a scenic landmark visible from the wilderness, or features eligible for the National Register of Historic Places) that it is highly important to acquire the property to safeguard Other Features of Value, even if the property is found to have remediation needs in one of the other qualities.*
- *Provide a finding summary of the donated land's compatibility and manageability as wilderness.*
- *Recommendation: acceptance of a land donation is discretionary. The Wilderness Compatibility Evaluation will identify if the land can be managed as wilderness if the BLM were to accept the donation. However, a positive finding in the evaluation does not obligate the BLM to accept the donation. There may be extenuating circumstances identified during the evaluation (e.g., staff commitments to higher-priority realty actions), or after the evaluation process (for example, as documented in the Checklist to Determine Appropriateness of Donation).*
- *The Field Manager signs the Wilderness Compatibility Evaluation. If the recommendation is not to accept the donation, the evaluation may be provided to the prospective donor to explain the reason for declining it. If the recommendation is to accept the donation, the evaluation is included in the donation package to assist in agency and departmental review in understanding the values of the property.*

2. Pre-donation details

- *Removing structures and installations is easiest if the work is performed before the area becomes wilderness via donation. The Wilderness Act allows for structures and installations only when they are the minimum necessary for the purpose of administering the area as wilderness or when they are cultural resources eligible for the National Register of Historic Places that contribute as an Other Feature of Value to the area's wilderness character. Those structures and installations that do not meet those criteria will need to be removed eventually: strategize with the donor about removing the structures before BLM accepts the donation, and the land becomes wilderness.*
- *In some cases, the donated property includes features which also provide public access. Make sure that those locations are clearly identified and/or addressed in the donation package in a way that will provide useable access.*
- *Ensure that any portions of the offered lands clearly incompatible with donation as wilderness (due to level of development, or other factors) are described and provisions agreed upon as to how those areas will be addressed (e.g., donation under FLPMA Sec. 205 or retention by the donor).*

3. The briefing paper should include the following

- *Short summary of the donation as stated in the donor's written offer.*
- *The Finding from the Wilderness Compatibility Evaluation.*
- *Explanation on any acceptance factor that may require additional information (from Manual 1105, Appendix 1). In particular, for Wilderness Act 6(a) donations, make sure that category 1, item 7 & 8, and category 3 – item 3 are addressed in the briefing paper.*
- *A description of any pre-donation agreements between the donor and BLM (for example, timing for removal of installations, and any associated FLPMA Section 205 acquisitions).*
- *Include a high-resolution, large-scale map(s) to depict the proposed donation and any other important geospatial information.*
- *Any other information required as standard protocol for briefing procedures.*