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Land Disposal Authorities and Processes of the Bureau of Land Management

June 3, 2024

Congressional Research Service

<https://crsreports.congress.gov>

R48079



Land Disposal Authorities and Processes of the Bureau of Land Management

Congress has provided various statutory authorities to the Bureau of Land Management (BLM), within the Department of the Interior, to dispose of federal lands through conveyance to another party. One such disposal authority is the Federal Land Policy and Management Act (FLPMA; 43 U.S.C. §§1701 et seq.). Another BLM disposal authority is the Recreation and Public Purposes Act (RPPA; 43 U.S.C. §§869 et seq.). The suitability of existing BLM disposal authorities, the circumstances of their use, and the extent of BLM land ownership overall form the backdrop for congressional consideration of measures to establish, eliminate, or modify authorities as well as measures to dispose of specific BLM lands.

FLPMA requires BLM to develop land use plans for its lands. Each plan is the basis for actions related to the covered lands and identifies lands potentially available for disposal under FLPMA, RPPA, or other authorities. FLPMA allows BLM to sell tracts of land that are identified for disposal through the land use planning process and that meet certain criteria. These criteria are that (1) the tract is difficult and uneconomic for BLM to manage and not suitable for management by another agency, (2) the tract is no longer needed for the purpose for which it was acquired or for any other federal purpose, or (3) disposal of the tract will serve important public objectives. FLPMA also authorizes BLM to exchange federal lands for nonfederal lands and sets out terms and conditions for exchanges. For instance, an exchange must be in the public interest and the federal and nonfederal lands must be in the same state and essentially of equal value.

RPPA allows BLM to sell or lease lands to states and other governmental units, federally recognized Indian tribes, and nonprofit entities for various public purposes, such as the establishment of parks, schools, police stations, and public works. Disposal must be in the public interest and requires a classification analysis of the specific intended use. Other conditions include acreage limitations for sales and term lengths for leases. BLM's general policy is to first issue a lease to help ensure the area is developed before authorizing a sale. Further, the price of the land depends in part on the type of entity that is to receive it (e.g., governmental or nonprofit), whether the land is sold or leased, and the intended use of the land.

BLM conveyances are governed by various requirements and processes. For example, land sales and exchanges under FLPMA and RPPA generally are subject to the federal environmental review process under the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321 et seq.). The level of review depends on the significance of the potential environmental effects of the disposal. BLM typically has prepared environmental assessments for disposals under FLPMA or RPPA; highly complex disposals have, at times, required more detailed environmental impact statements. NEPA analyses may incorporate information prepared by agencies under other laws, such as consultations under Section 7 of the Endangered Species Act (ESA; 16 U.S.C. §§1531 et seq.) or reviews under Section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. §§300101 et seq.). Section 7 of the ESA requires federal agencies to ensure their actions do not jeopardize species listed under the ESA or adversely modify or destroy designated critical habitat. For Section 7 to apply, there must be discretionary federal involvement or control in the action. Section 106 of the NHPA requires federal agencies to review the potential impacts of their actions on historic properties and consult with interested parties to seek ways to avoid, minimize, or mitigate any adverse effects.

BLM typically obtains an appraisal of market value for land disposals under FLPMA, whether by sale or exchange. FLPMA specifies that lands may not be sold at less than their fair market value. BLM regulations state that an exchange of lands must be based on the market value of the federal and nonfederal lands. Market value typically is based on an economic assessment of the highest and best use. Under RPPA, lands generally are sold or leased for less than market value or for free, although some lands are sold or leased based on a formula that depends on an appraisal to determine market value.

There is no general statutory timeline for BLM to dispose of lands or authority governing the order in which disposals are undertaken. The length of time to complete disposals varies widely, ranging from months to years. It depends on the number, variety, and components of applicable requirements; attributes and variables of the lands; whether the parcel is identified in a land use plan; BLM priorities and workload; and the availability and expertise of BLM staff, among other factors. Exchanges can be more time consuming than disposals because they involve two transactions.

R48079

June 3, 2024

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Introduction

Congress has broad constitutional power to manage the lands owned by the federal government, including the power to dispose of federal lands.¹ Congress has provided an array of statutory authorities to the Bureau of Land Management (BLM), within the Department of the Interior (DOI), to dispose of federal lands.² A *disposal* is the conveyance of BLM-administered land to a nonfederal party through methods such as sale and exchange. This report provides an overview of the main authorities and processes for BLM to dispose of federal land managed by the agency.³ It focuses on two *standing* authorities that generally are among the primary authorities BLM uses to dispose of land. For lands meeting certain conditions, the Federal Land Policy and Management Act (FLPMA) authorizes BLM to sell lands to, or exchange lands with, any nonfederal party.⁴ The Recreation and Public Purposes Act (RPPA) authorizes BLM to sell or lease lands to states and other governmental units, federally recognized Indian tribes, and nonprofit entities for specific purposes.⁵

In addition to these two standing authorities to convey land, this report covers selected related requirements and processes for conveyances.⁶ They include BLM's land use planning process; notification, consultation, and coordination requirements; the environmental review process under the National Environmental Policy Act (NEPA);⁷ Endangered Species Act (ESA) Section 7 consultation;⁸ National Historic Preservation Act (NHPA) Section 106 requirements;⁹ and land appraisals. It concludes with a discussion of factors contributing to the length of the land disposal process.

The BLM land use planning process provides the framework for land disposals and thus is set out first in this report. Some requirements for disposals often are addressed concurrently by the agency, such as consultation and coordination and assessments under ESA, NHPA, and NEPA, notwithstanding the order of their discussion in this report. Other land disposal actions may be taken later in the disposal process. An example is land appraisal, because appraisals typically are valid for one year only. Accordingly, appraisals are discussed in this report after other disposal requirements.

¹ The Property Clause of the U.S. Constitution, Article IV, Section 3, clause 2, gives Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

² Land disposal authorities and actions of the Secretary of the Interior discussed in this report generally are exercised by BLM. Further, in some cases, this report refers to Bureau of Land Management (BLM) although the authorities specify the Secretary of the Interior.

³ In this report, references to *federal land* and *land* generally encompass areas over which the BLM has full ownership (i.e., ownership in fee) as well as BLM interests in lands. An *interest in land* is something less than full ownership, such as an easement. Also, some of the information in this report is derived from a CRS report that provides an overview of the main authorities of BLM and other land management agencies to acquire and dispose of lands. See CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, coordinated by Carol Hardy Vincent.

⁴ Federal Land Policy and Management Act (FLPMA) sale authority is at 43 U.S.C. §1713. Exchange authority is at 43 U.S.C. §1716.

⁵ Recreation and Public Purposes Act (RPPA); 43 U.S.C. §§869 et seq.

⁶ This report does not identify or discuss all pertinent provisions of FLPMA, RPPA, or other laws governing related requirements and processes, nor does it identify or discuss all related regulations and agency policies.

⁷ National Environmental Policy Act (NEPA); 42 U.S.C. §§4321 et seq.

⁸ Endangered Species Act (ESA); 16 U.S.C. §§1531 et seq.

⁹ National Historic Preservation Act (NHPA); 54 U.S.C. §§300101 et seq.

Land Use Planning Process Under the Federal Land Policy and Management Act

FLPMA, enacted in 1976, is sometimes called BLM’s *Organic Act* because it consolidated and articulated BLM’s management responsibilities. Under the “multiple use” and “sustained yield” mandate set out in FLPMA,¹⁰ BLM lands are managed for diverse purposes. These purposes include energy and mineral development, livestock grazing, timber harvesting, rights-of-way, recreation, preservation of cultural resources, and protection of species and habitat. Some areas are withdrawn from one or more uses or managed for a predominant use.¹¹

FLPMA requires BLM to develop land use plans for its lands.¹² These plans sometimes are called *resource management plans* (RMPs) or, more simply, *plans*. Each BLM plan typically covers a broad area of BLM lands, such as those within the jurisdiction of a BLM district or field office, or BLM lands within a specially designated area, such as a national monument.¹³

Various processes and requirements apply when BLM develops an RMP. BLM develops the RMP through public participation and coordination with federal, state, local, and tribal planning efforts and assesses the potential environmental impacts of proposed RMPs under the NEPA process. The land use planning process begins with public scoping to identify the issues that should be addressed for the lands covered by the plan. BLM analyzes the issues and develops alternative management options, typically in a draft RMP and draft environmental impact statement (EIS).¹⁴ BLM subsequently revises these draft documents based on comments and, after taking other required actions, issues a final RMP and EIS.¹⁵

Plans are the basis of every action related to BLM lands. In each RMP, BLM provides goals and direction for managing lands currently and in the future, determines the uses for the covered lands, sets out resource protection needs and ways of achieving them, and identifies lands that might be suitable for BLM to acquire. BLM also identifies lands potentially available for disposal by assessing whether parcels might meet the requirements for sales or exchanges under FLPMA, sales or leases under RPPA, and/or disposal under other authorities.

For BLM to dispose of a parcel, the parcel generally must be identified in an RMP as suitable for disposal and the conveyance must conform to the RMP. However, after the initial development of an RMP, it is possible for BLM to amend the plan to make available for disposal a parcel that

¹⁰ In 43 U.S.C. §1702, FLPMA defines *multiple use* in part to include “a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values.” The law also defines *sustained yield* as “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.”

¹¹ For information on the multiple use and sustained yield mission of BLM, see CRS Legal Sidebar LSB10982, *Federal Land Management: When “Multiple Use” and “Sustained Yield” Diverge*, by Adam Vann.

¹² 43 U.S.C. 1712. Regulations governing BLM resource management planning are at 43 C.F.R. §1610. Additional BLM policy sources include BLM Manual 1601—*Land Use Planning* and BLM Handbook H-1601-1—*Land Use Planning Handbook*, release 1-1693, March 11, 2005, https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1601-1.pdf.

¹³ BLM regulations specify that a plan must be developed on a resource or field office basis unless the BLM state director authorizes otherwise. 43 C.F.R. §1610.1(b).

¹⁴ See, for instance, 43 C.F.R. §1601.0-6.

¹⁵ For additional information on BLM’s land use planning process, see the agency’s “Planning and NEPA in the BLM” webpage at <https://www.blm.gov/programs/planning-and-nepa>. For additional information on notification, consultation, and coordination requirements and NEPA, see the pertinent sections in this report.

originally had not been identified.¹⁶ BLM regulations provide that interest in having specific parcels of land offered for sale may be expressed through public input to the land use planning process or made directly to the pertinent BLM personnel.¹⁷

BLM typically does not engage in detailed reviews, analyses, and consultations regarding particular parcels as part of the land use planning process because circumstances affecting the parcels could change before they are disposed of. Instead, when a party expresses interest in acquiring a parcel identified as suitable for disposal in a plan, BLM engages in various reviews, analyses, and consultations to determine whether the parcel can be disposed of. These actions are undertaken pursuant to various laws. Some reviews may be conducted as part of the NEPA process, such as mineral, cultural, and other resource assessments. Analyses related to species and critical habitat are undertaken pursuant to ESA, and assessments related to historic properties are made pursuant to NHPA. BLM checks the cadastral survey and land status of the federal land to ensure its availability for disposal and, for exchanges, the title of the nonfederal land to ensure its acceptability for acquisition.¹⁸ DOI conducts an appraisal to determine the value of the land being conveyed out of federal ownership and the value of land being acquired as part of any exchange.¹⁹

In addition, RPPA disposals have a specific classification requirement to determine whether an intended land use upon transfer would be consistent with RPPA and appropriate for the resources in the area.²⁰ Classification can be set out in the RMP or determined when an entity (e.g., a local government) applies to have the land conveyed. Classification often is done when there is an application for lands for a specific project.²¹

Federal Land Policy and Management Act Sales and Exchanges²²

Sales

FLPMA authorizes BLM to sell certain tracts of land that are identified for disposal through the land use planning process. Such a tract must meet specific criteria:²³

¹⁶ See 43 C.F.R. §1610.5-3(c) and 43 C.F.R. §1610.5-5 pertaining to plan amendments.

¹⁷ 43 C.F.R. §2710.0-6(b).

¹⁸ A cadastral survey creates, marks, defines, retraces, or reestablishes the boundaries and subdivisions of BLM land in order to define the limits of title. The distinguishing features of a cadastral surveys are the establishment of monuments on the ground to define the boundaries of the land and their identification in land records by field notes and plats. See BLM, *Glossaries of BLM Surveying and Mapping Terms*, prepared by the cadastral survey training staff, Denver Service Center, 1980, p. 10, and BLM, *Public Land Statistics 2022*, Glossary, p. 241, https://www.blm.gov/sites/default/files/docs/2023-07/Public_Lands_Statistics_2022.pdf.

¹⁹ Sections of this report discuss several of these reviews, analyses, and consultations.

²⁰ Regulations governing land classification are at 43 C.F.R. Part 2400. In particular, 43 C.F.R. §2400.0-3(f) identifies RPPA disposals as requiring classification.

²¹ CRS consultation with BLM staff on September 18, 2023.

²² As noted, sale authority is at 43 U.S.C. §1713 and exchange authority is at 43 U.S.C. §1716. Regulations governing FLPMA sales are at 43 C.F.R. Part 2710. Regulations governing FLPMA exchanges are at 43 C.F.R. Part 2200. Additional BLM policy sources include BLM Handbook H-2200-1—*Land Exchange Handbook*, release 2-297, August 20, 2007, <https://www.blm.gov/sites/blm.gov/files/H-2200-1.pdf>. Hereinafter referred to as *Land Exchange Handbook*.

²³ The criteria are set out in 43 U.S.C. §1713(a).

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

BLM generally determines the size of the tract to make available for sale by “the land use capabilities and development requirements.”²⁴ FLPMA specifies that proposals to sell parcels of more than 2,500 acres first must be submitted to Congress and can be disapproved by Congress.²⁵ Also, FLPMA generally provides for the reservation of minerals to the United States in land sales, although it allows for conveyance of such rights in certain specified situations.²⁶

Under FLPMA, lands may not be sold at less than their fair market value.²⁷ (For information on appraisal of a tract’s fair market value, see “Appraisals,” below.) They generally must be sold through competitive bidding.²⁸ However, modified competition and noncompetitive sales are allowed where the Secretary of the Interior determines it is necessary to assure equitable distribution among purchasers or to recognize equitable considerations or public policies. In determining the method of sale, factors for consideration include competitive interest, needs of state and local governments, adjoining landowners, historical uses, and equitable distribution of land ownership.²⁹

Exchanges

FLPMA authorizes BLM to exchange lands. The land exchange process generally has five phases: (1) development of an exchange proposal, (2) feasibility evaluation, (3) processing and documentation, (4) decision analysis and approval, and (5) title transfer.³⁰ Each phase typically involves multiple actions. For example, the processing and documentation phase includes title review; public notice and comment; identification and mitigation of environmental effects under NEPA; assessments of mineral, cultural, and other resources; Native American consultations; threatened and endangered species consultations; and preparation and review of land appraisals.³¹

²⁴ 43 U.S.C. §1713(e).

²⁵ 43 U.S.C. §1713(c). In 2017, the U.S. Court of Appeals for the Ninth Circuit held in *National Mining Association v. Zinke*, 877 F.3d 845, 861 (9th Cir. 2017), that the concurrent resolution disapproval mechanism for withdrawals in FLPMA §204(c) constituted an unconstitutional legislative veto in light of the Supreme Court’s ruling in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919, 952-59 (1983), due to the omission of a presentment requirement in the statutory provision. The concurrent resolution disapproval mechanism for sales would raise the same constitutional concern.

²⁶ 43 U.S.C. §1719.

²⁷ 43 U.S.C. §1713(d).

²⁸ 43 U.S.C. §1713(f).

²⁹ 43 C.F.R. §2710.0-6(c).

³⁰ BLM, Handbook H-2200-1—*Land Exchange Handbook*, p. 1-15 - 1-17.

³¹ Additional detail on these five phases and land exchanges in general is contained in CRS Report R41509, *Land Exchanges: Bureau of Land Management (BLM) Process and Issues*, by Carol Hardy Vincent.

FLPMA sets out terms and conditions for exchanges.³² The law requires that the federal and nonfederal lands in the exchange must be located in the same state.

Exchanges under FLPMA must be in the public interest. Public land may be exchanged if the Secretary of the Interior determines the public interest will be “well served.”³³ FLPMA and accompanying regulations require that, when determining the public interest, the Secretary must consider numerous factors. These factors include achieving better federal land management, including by consolidation of lands; meeting the needs of state and local people for economic and community expansion; enhancing recreation and public access; and protecting fish and wildlife habitats, cultural resources, watersheds, wilderness, and aesthetic values.³⁴

To make an exchange, the Secretary must find that the resource values and public benefits of the federal lands to be conveyed are not more than those of the nonfederal lands being acquired.³⁵ Further, the intended use of the conveyed federal lands should not conflict significantly with management of adjacent federal and Indian trust lands.³⁶ In making an exchange, BLM must reserve any rights or retain interests that are needed to protect the public interest or otherwise impose restrictions on the use of the federal lands conveyed.³⁷ BLM may not accept title to nonfederal land if there are reserved or outstanding interests that would interfere with the use and management of the lands or are inconsistent with the purposes for which the lands are being acquired.³⁸

Under FLPMA, the values of the lands exchanged are to be equal or, if they are not equal, they are to be equalized by the payment of money up to 25% of the value of the federal lands being conveyed in the exchange.³⁹ The parties in the exchange may agree to waive this payment if the exchange meets certain requirements, including that the amount waived is not more than 3% of the value of the federal lands or \$15,000, whichever is less.⁴⁰ Another way of equalizing value is for either party to add or remove lands. Further, the Secretary of the Interior may exchange lands that are of “approximately” equal value under certain conditions, including if the value of the federal lands does not exceed \$150,000.⁴¹ (For information on appraisals, see “Appraisals,” below.)

BLM and other parties generally are required to bear their own administrative costs of an exchange; these may include, for instance, costs related to conducting land appraisals, mineral examinations, and cultural resource surveys and addressing deficiencies preventing highest and best use of the land.⁴² However, if BLM determines it is in the public interest, the parties can agree that one party may bear costs and responsibilities typically assumed by the other, subject to certain terms.⁴³

³² 43 U.S.C. §1716.

³³ 43 U.S.C. §1716(a).

³⁴ 43 U.S.C. §1716(a); 43 C.F.R. §2200.0-6(b).

³⁵ 43 U.S.C. §1716(a).

³⁶ 43 C.F.R. §2200.0-6(b).

³⁷ 43 C.F.R. §2200.0-6(i).

³⁸ 43 C.F.R. §2201.8(c).

³⁹ 43 U.S.C. §1716(b).

⁴⁰ 43 U.S.C. §1716(b).

⁴¹ 43 U.S.C. §1716(b); 43 C.F.R. §§2201.5 and 2201.6.

⁴² 43 C.F.R. §2201.1-3.

⁴³ 43 U.S.C. §1716(f)(2)(B); 43 C.F.R. §2201.1-3.

Although some exchanges involve single parcels, BLM regulations also allow for the use of assembled land exchanges, which consolidate multiple parcels for one or more exchanges over time.⁴⁴ An assembled land exchange may be used to facilitate exchanges and reduce costs, for instance, by consolidating many federal parcels of limited value. In other cases, third parties may secure lands that BLM wants to acquire from multiple owners to facilitate negotiations. Both for-profit and nonprofit organizations have facilitated assembled land exchanges, typically functioning as brokers/agents for the exchange.

Recreation and Public Purposes Act Sales and Leases⁴⁵

RPPA authorizes the disposal of BLM lands “to a State, federally recognized Indian Tribe, Territory, county, municipality, or other State, Tribal, Territorial, or Federal instrumentality or political subdivision for any public purposes, or to a nonprofit corporation or nonprofit association for any recreational or any public purpose consistent with its articles of incorporation or other creating authority.”⁴⁶

The lands can be sold or leased for various public purposes. Examples of public purposes include the establishment of parks, historic monument sites, fairgrounds, schools, hospitals, fire and police stations, courthouses, social services facilities, and public works, among others.⁴⁷

RPPA and related authorities specify conditions and qualifications for land sales and leases.⁴⁸ Under BLM policies, BLM first issues a lease, or a lease with option to purchase, before selling the land.⁴⁹ This process is intended to help ensure the area is developed before BLM sells the land. A disposal must be in the public interest. The land may not be of national significance or more acreage than is reasonably necessary for the proposed use. The Secretary must be satisfied that the land is to be used for “an established or definitely proposed project” that includes development and management plans.⁵⁰ As noted, disposals under RPPA require a classification analysis of a specific intended use of the land to determine whether the disposal would be consistent with RPPA and the resources in the area. Such classification usually is done when there is an application for lands for a specific project. For proposals of over 640 acres, the appropriate

⁴⁴ BLM regulations, at 43 C.F.R. §2200.0-5(f), define an *assembled land exchange* as consolidation of multiple parcels of federal or nonfederal land for the purpose of one or more exchange transactions over a period of time.

⁴⁵ 43 U.S.C. §§869 et seq. Regulations governing RPPA sales are at 43 C.F.R. Part 2740. Regulations governing RPPA leases are at 43 C.F.R. Subpart 2912. Additional BLM policy sources for sales and leases include BLM Manual Handbook H-2740-1—*Recreation and Public Purposes*, release 2-275, May 10, 1993, https://www.blm.gov/sites/blm.gov/files/Media_Library_BLM_Policy_h2740-1.pdf, and a BLM “Recreation and Public Purposes Act Information Sheet” on the agency’s website at https://www.blm.gov/sites/default/files/LandTenure_RecandPublicPurposesAct_InfoSheet.pdf. Hereinafter cited as “BLM RPPA Information Sheet.”

⁴⁶ 43 U.S.C. §869.

⁴⁷ BLM regulations define *public purpose* as “providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only when necessary for and integral to, i.e., and [sic] essential part of, the public purpose.” 43 C.F.R. §2740.0-5(d).

⁴⁸ Information on conditions and qualifications is derived from the law at 43 U.S.C. §§869 et seq., regulations at 43 C.F.R. Part 2740, regulations for leases at 43 C.F.R. Part 2912, and the BLM RPPA Information Sheet. This report does not detail RPPA and associated provisions of regulations specific to solid waste disposal and the disposal, placement, or release of hazardous substances. See 43 U.S.C. §869-2 and 43 C.F.R. Subpart 2743.

⁴⁹ However, projects that include the disposal, placement, or release of hazardous materials (i.e., sanitary landfills) may only be sold. BLM RPPA Information Sheet, p. 1.

⁵⁰ 43 U.S.C. §869.

state, tribal, or local authority must have adopted comprehensive land use plans and zoning regulations applicable to the area.⁵¹ Also, RPPA sales and leases must provide for the reservation of minerals to the United States.⁵²

Additional conditions apply to leases under RPPA. These conditions include a stipulation that leases may not exceed 20 years for nonprofit entities and 25 years for governmental entities and may allow for renewal.⁵³ Leases may be terminated for noncompliance with the terms, including use of the land for purposes that were not authorized and failure to use the lands for the specified period. A lessee may apply for a new lease with any changes in terms and conditions, accompanied by consent to cancel an existing lease.⁵⁴

For sales, the law specifies annual acreage limitations. For example, for recreational purposes, any state, state (park) agency, or political subdivision of a state may acquire up to 6,400 acres annually and may acquire “such additional acreage as may be needed” for roadside parks and rest sites of no more than 10 acres each.⁵⁵ As another example, in general, no more than 25,600 acres annually may be conveyed for recreational purposes in any state.⁵⁶ For purposes other than recreation, any state, state agency, political subdivision of a state, nonprofit entity, and federally recognized Indian tribe may acquire 640 acres annually.⁵⁷ For leases, the law does not set limitations on the acreage.

Under RPPA, the price of the land depends in part on the type of entity that is to receive it—for instance, whether the entity is governmental or nonprofit.⁵⁸ The price also depends on whether the lands are sold or leased and the intended use of the land. For governmental entities, RPPA provides that sales are to be made at no cost for recreational or historic monument purposes and sales for other purposes are to be made at a price determined by the Secretary of the Interior “through appraisal or otherwise after taking into consideration the purpose for which the lands are to be used.”⁵⁹ The law provides that leases to governmental entities for recreation are to be made at no cost and leases for other purposes are to be made “at a reasonable annual rent.”⁶⁰ For nonprofit entities, RPPA provides that sales are to be made at a price determined by the Secretary of the Interior “through appraisal, after taking into consideration the purpose for which the lands are to be used,” and leases are to be made at a “reasonable annual rent.”⁶¹ BLM policies detail pricing schedules for different entities for varying purposes.⁶² Some sales and leases qualify for special fixed pricing under BLM policies (e.g., \$10 per acre for certain sales).⁶³

⁵¹ 43 U.S.C. §869.

⁵² 43 U.S.C. §869-1.

⁵³ 43 C.F.R. §2912.1-1(a).

⁵⁴ 43 C.F.R. Subpart 2912.

⁵⁵ This and other acreage limitations are set out at 43 U.S.C. §869(b).

⁵⁶ 43 U.S.C. §869(b)(1)(C).

⁵⁷ 43 U.S.C. §869(b)(2).

⁵⁸ *Governmental* is used in this paragraph to encompass “State, federally recognized Indian Tribe, Territory, county, or other State, Tribal, Territorial, or Federal instrumentality or political subdivision in which the lands are situated, or to a nearby federally recognized Indian Tribe or municipal corporation in the same State or Territory,” as set out in 43 U.S.C. §869-1.

⁵⁹ 43 U.S.C. §869-1.

⁶⁰ 43 U.S.C. §869-1.

⁶¹ 43 U.S.C. §869-1.

⁶² BLM RPPA Information Sheet, p. 2.

⁶³ *Ibid.*

Patents for lands sold under RPPA typically include a reversionary clause requiring the recipient to use the lands for the intended public purposes or the lands revert to the federal government.⁶⁴ This is because the lands are conveyed for free or below market value to a qualified applicant for specified public purposes.

BLM policies contain application requirements and guidance for parties interested in an RPPA sale or lease.⁶⁵ Depending on the magnitude of, and public interest in, the proposed use, “various investigations, studies, analyses, public meetings and negotiations may be required of the applicant prior to the submission of the application,” according to BLM regulations.⁶⁶ BLM policies also address agency actions and procedures after receiving an RPPA application. These actions and procedures include determining if the proposal conforms with governing authorities such as the RMP, law, and regulations; evaluating the applicant’s development and management plans, construction schedule, and financing to determine their adequacy and effectiveness; checking for the presence of unpatented mining claims (which would bar an RPPA disposal); conducting a cadastral survey of the land; obtaining an appraisal (for lands sold or leased based on market value); soliciting views and comments from agencies and the public; and engaging in environmental and other reviews and analyses, among other requirements.⁶⁷

Other BLM Disposal Authorities

In addition to authority in FLPMA and RPPA, Congress has provided BLM with other standing authorities to dispose of land. One authority pertains to patents under the General Mining Law of 1872.⁶⁸ However, since FY1995, a series of moratoria in annual appropriations laws essentially have prevented this means of federal land disposal.⁶⁹ Certain laws provide specifically for the disposal of desert lands. The Carey Act authorizes transfers of desert lands to a state,⁷⁰ upon application and meeting certain requirements, and the Desert Entry Land Act allows citizens to reclaim and patent 320 acres of desert public land.⁷¹

The Federal Land Transaction Facilitation Act provides for the sale or exchange of BLM lands identified for disposal under BLM land use plans.⁷² The law created a separate Treasury account

⁶⁴ 43 U.S.C. §869-2.

⁶⁵ BLM RPPA Information Sheet, pp. 4-6.

⁶⁶ 43 C.F.R. §2741.3(c).

⁶⁷ Some of these actions are set out in the BLM RPPA Information Sheet, pp. 6-7.

⁶⁸ Provisions of the General Mining Law of 1872 allow access to and development of hard-rock minerals on federal lands that have not been withdrawn from entry. With evidence of valuable minerals and sufficient developmental effort, the law allows mining claims to be patented, with full title (of surface and mineral rights) transferred to the claimant upon payment of the appropriate fee (30 U.S.C. §29). Nonmineral lands used for associated milling or other processing operations also can be patented (30 U.S.C. §42).

⁶⁹ Patent applications meeting certain requirements filed on or before September 30, 1994, have been allowed to proceed. See, for example, Consolidated Appropriations Act, 2024 (P.L. 117-42), Division E, §404.

⁷⁰ Carey Act; 43 U.S.C. §641.

⁷¹ Desert Entry Land Act; 43 U.S.C. §321. Desert land laws are seldom used today because the lands must be classified as available and the claimant must obtain sufficient water rights for settling on the land.

⁷² The Federal Land Transaction Facilitation Act (FLTFA) originally was enacted on July 25, 2000, as P.L. 106-248, Title II. The law initially provided authority to BLM to sell or exchange land under FLTFA for 10 years, expiring on July 25, 2010. Subsequently, on July 29, 2010, the authority was extended for one year; it expired on July 25, 2011. The authority was revised and made permanent on March 23, 2018, by provisions of the Consolidated Appropriations Act, 2018 (P.L. 115-141, Division O, Title III).

for most of the proceeds from the sale or exchange,⁷³ and it provided for the use of those funds by the Secretary of the Interior and the Secretary of Agriculture.⁷⁴ The Secretaries may use the funds to acquire nonfederal lands (specifically inholdings), lands adjacent to federal lands that contain exceptional resources, and areas adjacent to inaccessible lands that are open to recreation. Up to 20% of the funds in the account may be used for administrative costs, and at least 80% of the funds for acquisition are to be used in the state in which the funds are generated.

BLM also has geographically limited land disposal authorities. The program with the largest revenue stream has been under the Southern Nevada Public Land Management Act of 1998.⁷⁵ The law authorizes the Secretary of the Interior to sell or exchange BLM land around Las Vegas,⁷⁶ with a goal of allowing for community expansion and economic development. Of total receipts, 85% are deposited into a special account and are available to the Secretary of the Interior for land acquisition and other activities in Nevada and 15% are allocated to Nevada for specified state and local purposes. Other provisions of law similarly authorize BLM land disposal in particular areas with specific allocations of the proceeds. In addition, BLM continues to dispose of land in Alaska as required by law, such as through transfers to the State of Alaska, Alaska Native Corporations, and individual Alaska Natives.⁷⁷ A total of about 150 million acres in Alaska is in the process of being transferred from federal ownership to state and private ownership.

In addition to providing BLM with standing disposal authorities, Congress enacts legislation authorizing or directing the disposal of particular parcels or types of land managed by BLM. BLM disposals under such legislated conveyances generally are subject to requirements and processes similar to those for BLM disposals under FLPMA and RPPA, unless Congress specifies otherwise. There may be other exceptions; for example, BLM might determine there is insufficient time or need to engage in an action, such as an appraisal of lands specified in law for disposal at no cost.⁷⁸

Notification, Consultation, and Coordination Requirements⁷⁹

BLM is required to provide for notification, consultation, and governmental coordination in management of lands generally. For instance, FLPMA requires the Secretary of the Interior to

⁷³ The FY2024 BLM budget justification notes that under the 1952 Interior and Related Agencies Appropriations Act, “states are paid five percent of the net proceeds (four percent of gross proceeds) from the sale of public land and public land products.” See BLM, *Budget Justifications and Performance Information, Fiscal Year 2024*, p. XI-2. This same source notes that 4% of FLTFA collections are paid to the state where the land is sold; see pp. IV-3 and XII-14.

⁷⁴ The FLTFA Interagency Implementation Agreement, dated January 2022, provides for an approximate allocation of acquisition funds: 60% for BLM, 20% for U.S. Forest Service, 10% for U.S. Fish and Wildlife Service (FWS), and 10% for National Park Service.

⁷⁵ Southern Nevada Public Land Management Act of 1998; P.L. 105-263, as amended.

⁷⁶ In this report, authorities and actions of the Secretary of the Interior generally are exercised by BLM. Further, in some cases, this report refers to BLM although the authorities specify the Secretary of the Interior.

⁷⁷ Multiple provisions of law provide authority for conveyance of lands in Alaska. They include the 1906 Native Allotment Act, Alaska Statehood Act of 1959, Alaska Native Claims Settlement Act of 1971, Alaska Native Veterans Allotment Act of 1998, and Alaska Native Vietnam Era Veterans Land Allotment Program in P.L. 116-9, §1119. For information on the Alaska Native Claims Settlement Act, see CRS Report R46997, *Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress*, by Mariel J. Murray.

⁷⁸ This information is based in part on CRS consultation with BLM staff on September 18, 2023.

⁷⁹ In addition to the authorities referenced in this section, notification, consultation, and coordination requirements are (continued...)

provide for public involvement in land use planning and management, and it directs the Secretary to issue regulations establishing procedures to give federal, state, and local governments and the public “adequate notice and opportunity to comment upon and participate in the formulation of plans and programs” related to management of BLM lands.⁸⁰ BLM regulations set out requirements for public participation in land use planning.⁸¹ Under this authority, BLM often receives input on planning from the general public, local user groups, and industry representatives, among other groups. Further, FLPMA provides for coordination of BLM land use inventory, planning, and management activities with the land use planning and management programs of other federal agencies, state and local governments, and tribes. It also provides for consistency of BLM plans with nonfederal government plans to the maximum extent practicable.⁸² BLM regulations include related provisions.⁸³

Related provisions of FLPMA pertain to notification, consultation, and coordination requirements for land conveyances in particular. For example, one provision directs the Secretary of the Interior to notify pertinent state and local governments at least 60 days before offering to dispose of lands under the act, to allow state and local governments to zone/regulate the area or change the zoning/other regulations for the area prior to conveyance.⁸⁴ BLM regulations contain additional directives. For instance, at least 60 days prior to a land sale under FLPMA, BLM is required to publish and send notice to interested parties. The notice must provide 45 days for comment by the public and interested parties. At least 60 days prior to a sale, BLM also is required to send notice to Members of Congress in whose districts or states the lands are located and to certain state and local officials. In addition, BLM must send notice to adjoining landowners, current landowners, and “other known interested parties of record.”⁸⁵

In addition to FLPMA, other authorities require notification, consultation, and/or governmental coordination in BLM land management generally and land disposal in particular. For example, RPPA requires the Secretary of the Interior to provide “an opportunity for participation by affected citizens in disposals” under the law, including public hearings or meetings as the Secretary deems appropriate.⁸⁶ For any proposed disposal of more than 640 acres, the law requires at least one public meeting and that comprehensive land use plans and zoning regulations for the area have been adopted by the appropriate state, local, or tribal authority, as noted.⁸⁷ Another example is Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).⁸⁸ This provision requires federal agencies to disclose whether contamination is present and to remediate contamination prior to disposal, unless the recipient agrees to accept responsibility for the remediation in certain situations.⁸⁹

contained in BLM policy sources. These include BLM Manual 1780—*Tribal Relations*, BLM Handbook H-2200-1—*Land Exchange Handbook*, and BLM’s 2012 guidance entitled *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners*.

⁸⁰ 43 U.S.C. §1712(f).

⁸¹ See, for example, 43 C.F.R. §1610.2.

⁸² 43 U.S.C. §1712(c)(9).

⁸³ See, for example, 43 C.F.R. §1610.3.

⁸⁴ 43 U.S.C. §1720.

⁸⁵ 43 C.F.R. §2711.1-2.

⁸⁶ 43 U.S.C. §869(a).

⁸⁷ 43 U.S.C. §869(a).

⁸⁸ Comprehensive Environmental Response, Compensation, and Liability Act; 42 U.S.C. §9620(h).

⁸⁹ For additional information on these requirements and notification of other potential hazards, see BLM Handbook H-2000-02—*Environmental Site Assessments for Disposal of Real Property*, release 2-299, August 21, 2012, https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_H-2000-02.pdf.

Additional authorities pertain to notification of Congress, as is the case for land sales under FLPMA exceeding 2,500 acres.⁹⁰ Further, explanatory statements accompanying annual appropriations laws have specified that exchanges involving federal lands valued at more than \$1.0 million may not be completed until the House and Senate Committees on Appropriations have had 30 days to review the exchange. The explanatory statements also have directed that agencies provide advance notice to these committees of exchanges involving federal lands valued at between \$0.5 million and \$1.0 million.⁹¹

National Environmental Policy Act Environmental Review Process

A BLM land sale or exchange may be subject to the federal environmental review process under NEPA if it is a “major federal action” covered under the statute.⁹² Section 321 of the Fiscal Responsibility Act of 2023 (FRA) amended NEPA to define this and other terms and specified certain review procedures in the statute.⁹³ These amendments codified various regulations that the Council on Environmental Quality (CEQ) promulgated to carry out NEPA, albeit with certain differences and additions.⁹⁴ On May 1, 2024, CEQ issued a rule to revise these regulations pursuant to the FRA amendments and for certain other purposes; the revised regulations will become effective on July 1, 2024.⁹⁵ Individual agencies also may revise their NEPA procedures pursuant to the FRA amendments and these CEQ regulations. DOI regulations for carrying out NEPA apply department-wide.⁹⁶ BLM outlined additional procedures in its *National Environmental Policy Act Handbook* for major federal actions under its jurisdiction.⁹⁷ DOI and BLM issued these procedures prior to the FRA, but many of these procedures are similar to those codified in the amendments to NEPA.

NEPA defines *major federal action* to mean “an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility.”⁹⁸ This definition also excludes certain types of actions that are not subject to NEPA; for example, it excludes “activities or decisions that are non-discretionary and made in accordance with the agency’s statutory authority.”⁹⁹

Discretionary land sales or exchanges executed under BLM’s standing authority (e.g., under FLPMA or RPPA) generally are subject to NEPA, unless the specific action is covered by an

⁹⁰ See footnote 25.

⁹¹ Consolidated Appropriations Act, 2024, “Joint Explanatory Statement, Division E, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2024,” *Congressional Record*, March 5, 2024, S1676.

⁹² 42 U.S.C. §§4321 et seq.

⁹³ Fiscal Responsibility Act of 2023; P.L. 118-5. For an overview of NEPA as amended, see CRS In Focus IF12417, *Environmental Reviews and the 118th Congress*, by Kristen Hite.

⁹⁴ 40 C.F.R. Parts 1500-1508.

⁹⁵ Council on Environmental Quality, “National Environmental Policy Act Implementing Regulations Revisions Phase 2,” 89 *Federal Register* 35442-35577, May 1, 2024.

⁹⁶ 43 C.F.R. Part 46.

⁹⁷ BLM Handbook H-1790-1—*National Environmental Policy Act Handbook*, release 1-1710, January 30, 2008, https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1790-1.pdf. Hereinafter referred to as *National Environmental Policy Act Handbook*.

⁹⁸ 42 U.S.C. §4336e(10).

⁹⁹ 42 U.S.C. §4336e(10)(B)(vii).

exclusion in NEPA.¹⁰⁰ Whether a land sale or exchange is subject to NEPA review also depends on certain other exclusions that could apply to some situations.¹⁰¹ Land sales or exchanges that Congress directs in statute also generally are subject to NEPA review, unless the statute authorizing the sale or exchange expressly waives the requirement or removes all BLM discretion in executing the disposal (or unless the sales or exchanges are otherwise excluded under NEPA).¹⁰² The BLM *Land Exchange Handbook* notes that legislatively directed land exchanges have varied widely in terms of whether Congress has specified in such legislation if NEPA analysis must be conducted.¹⁰³

When NEPA applies to a land sale or exchange, the level of review that BLM must conduct depends on the significance of the proposed action's potential environmental effects. NEPA requires the preparation of an EIS for major federal actions "significantly affecting the quality of the human environment."¹⁰⁴ The act also requires that an EIS include analyses of the "reasonably foreseeable environmental effects" of a proposed action, a "reasonable range of alternatives" to carry out the purpose and need of the action, and certain other factors.¹⁰⁵ CEQ regulations specify additional information to support these analyses.¹⁰⁶ NEPA also requires agencies to request public comment when issuing a notice of intent to prepare an EIS.¹⁰⁷ CEQ regulations outline additional opportunities for public involvement.¹⁰⁸ Once an EIS is finalized, CEQ regulations require an agency to document its decision, consideration of alternatives, and analyses in a record of decision.¹⁰⁹

NEPA directs agencies to prepare an environmental assessment (EA) when the proposed action "does not have a reasonably foreseeable significant effect" on the human environment to merit an EIS or when the significance of such effects is unknown, unless an exclusion applies under NEPA or another provision of law.¹¹⁰ If an agency determines the proposed action's effects would be significant, an EIS would be required.¹¹¹ If an agency determines the effects would not be significant, the agency would issue a Finding of No Significant Impact (commonly referred to as FONSI), which would conclude the NEPA process for that action.¹¹² Agencies may provide opportunities for public involvement in preparing an EA, but such opportunities are not required by statute.

NEPA allows agencies to identify specific categories of major federal actions that normally would not have significant effects on the quality of the human environment sufficient to trigger a requirement to prepare a detailed statement (i.e., EIS) under NEPA, generally referred to as

¹⁰⁰ 42 U.S.C. §4336e(10)(B).

¹⁰¹ 42 U.S.C. §4336(a).

¹⁰² 42 U.S.C. §4336e(10); 42 U.S.C. §4336(a).

¹⁰³ BLM Handbook H-2200-1—*Land Exchange Handbook*, p. 1-5.

¹⁰⁴ 42 U.S.C. §4332(2)(C); 42 U.S.C. §4336(b)(1); 42 U.S.C. §4336e(6).

¹⁰⁵ 42 U.S.C. §4332(2)(C).

¹⁰⁶ 40 C.F.R. Part 1502.

¹⁰⁷ 42 U.S.C. §4336a(c).

¹⁰⁸ 40 C.F.R. §1506.6.

¹⁰⁹ 40 C.F.R. Part 1505.

¹¹⁰ 42 U.S.C. §4336(b)(2). Council on Environmental Quality regulations, which predate the existing statutory provision, outline similar procedures for when agencies should prepare an environmental assessment (EA). See 40 C.F.R. §1501.5.

¹¹¹ 42 U.S.C. §4332(2)(C); 42 U.S.C. §4336(b)(1)-(2); 40 C.F.R. §1501.5(c)(1).

¹¹² 42 U.S.C. §4336e(7) and 40 C.F.R. §1501.6.

categorical exclusions.¹¹³ CEQ regulations outline procedures for agencies to establish categorical exclusions.¹¹⁴ To date, neither Congress, DOI, nor BLM has established a categorical exclusion for land sales and exchanges.¹¹⁵

In past practice, BLM typically has prepared an EA for land disposals conducted under FLPMA or RPPA, according to BLM.¹¹⁶ However, for a highly complex area, BLM indicated the agency would more likely prepare an EIS.¹¹⁷ The BLM National NEPA Register contains documents related to BLM land disposals.¹¹⁸

The timing of a NEPA review is largely driven by the complexity of the analyses. The scope of potential environmental effects that an agency must consider under NEPA is relatively broad. CEQ regulations define the term *environmental effects* or *impacts* for the purposes of NEPA to include not just ecological effects but also “aesthetic, historic, cultural, economic, social, or health effects, whether direct, indirect, or cumulative.”¹¹⁹

Depending on the breadth of the potential effects and applicable laws, multiple federal, state, local, or tribal agencies may be involved in the preparation of analyses for an EA or EIS. NEPA establishes procedures for identifying lead, cooperating, and participating agencies and for coordination of their respective roles.¹²⁰ NEPA analyses may incorporate information prepared by lead, cooperating, or participating agencies under other laws, such as ESA consultations or NHPA reviews (discussed below). A land exchange could be more complex than a land sale, given that BLM would be required to consider foreseeable future uses of both the federal and nonfederal

¹¹³ 42 U.S.C. §4336e(1) and 40 C.F.R. §1501.4. Categorical exclusions often are referred to as CE, CX, or CAT-EX.

¹¹⁴ 40 C.F.R. §1501.4.

¹¹⁵ Department of the Interior (DOI) department-wide categorical exclusions are listed in 43 C.F.R. §46.205, §46.210, and §46.215. Additional BLM categorical exclusions are listed in BLM Handbook H-1790-1, *National Environmental Policy Act Handbook*, pp. 17-20.

¹¹⁶ CRS consultation with BLM staff on September 18, 2023.

¹¹⁷ *Ibid.*

¹¹⁸ The BLM National NEPA Register is on the BLM website, “BLM National NEPA Register” webpage, <https://eplanning.blm.gov/eplanning-ui/home>. See the following documents on the website for examples of land disposal:

For an example of a BLM EA for a land sale under FLPMA, see BLM’s webpage on “Smith Mountain Land Sale (Disposal),” project information last updated on August 22, 2016, <https://eplanning.blm.gov/eplanning-ui/project/62496/510>. This EA pertains to the Smith Mountain Land Sale (CA), a direct sale of an approximately 40-acre parcel to an adjacent property owner, at not less than fair market value. The sale was to include the surface and mineral estate and a reservation to the United States for ditches and canals, and was subject to an existing right-of-way for a communication facility.

For an example of a BLM EA for a lease and conveyance under RPPA, see BLM’s webpage on “Peralta Recreation & Public Purposes Act Project,” project information last updated on August 8, 2019, <https://eplanning.blm.gov/eplanning-ui/project/93074/510>. This EA pertains to the Peralta RPPA Project (AZ). This project involved an application from a county for a 25-year lease, with an option for conveyance, of approximately 498 acres for a regional park. The EA also analyzed impacts of cancellation of an existing BLM grazing lease.

For an example of an environmental impact statement for a land exchange under FLPMA, see BLM’s webpage on “Proposed Blue Valley Land Exchange,” project information last updated on May 7, 2024, <https://eplanning.blm.gov/eplanning-ui/project/81162/510>, regarding the Blue Valley Land Exchange (CO). The exchange involves BLM conveyance of nine parcels totaling 1,489 acres and a cash equalization payment to the owner of Blue Valley Ranch, in exchange for nine parcels of nonfederal lands totaling 1,830 acres, a portion of which was donated. The exchange included mineral estates, water rights, and an access easement to the United States. A portion of the nonfederal land acquired by BLM would be transferred to the administrative jurisdiction of the U.S. Forest Service because the area is within the boundaries of a National Forest. (This description reflects corrections in an Errata document at 03032023 Blue Valley Ranch Extra Sheet for ROD.pdf (blm.gov)).

¹¹⁹ 40 C.F.R. §1508.1.

¹²⁰ 42 U.S.C. §4336a(a).

land for a land exchange.¹²¹ However, the complexity of NEPA analyses to evaluate a particular action ultimately would be site-specific. Land sales and exchanges may vary in terms of this complexity and whether an EA or EIS is required under NEPA.

Endangered Species Act Section 7 Consultation¹²²

When disposing of public land, BLM must consider its obligations under the ESA.¹²³ Section 7 of the ESA requires federal agencies such as BLM to ensure their actions do not jeopardize species listed under the ESA or adversely modify or destroy designated critical habitat.¹²⁴ Agencies must make these determinations in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (together, the Services), which administer the act.¹²⁵ Section 7 requirements generally apply to actions that federal agencies undertake directly, authorize (e.g., permit or license), or fund.¹²⁶ With regard to disposals by exchange, the Section 7 requirements would apply to the entire agency action, including the effect of accepting the nonfederal land into federal ownership.

For Section 7 to apply, there must be discretionary federal involvement or control in the action.¹²⁷ A disposal mandated by Congress in legislation gives BLM less discretion in carrying out the action than if BLM were to initiate a disposal under one of its standing authorities, such as FLPMA or RPPA. So long as BLM retains discretion in any aspect of carrying out a disposal, the requirements of Section 7 may apply to the action. Even if Section 7 applies to a particular action such that consultation is required, the discretion afforded the agency may affect other aspects of the consultation. Such aspects may include the *reasonable and prudent alternatives* (RPAs) available for the action, if the Services determine the action may jeopardize listed species, or the *reasonable and prudent measures* (RPMs) the Services may determine are necessary or appropriate to minimize the action's impact on listed species.¹²⁸

The level of consultation required under Section 7 depends on the extent of the agency's discretion in carrying out the action and the action's anticipated effect on listed species and critical habitat. To assess the action's potential effect, the agency must determine the area likely to be affected, referred to as the *action area*.¹²⁹ The action area includes areas directly or indirectly affected by the action.¹³⁰ For example, for BLM disposals, the action area would include the land to be conveyed but also may include surrounding areas that may be affected by the transfer of ownership. For disposals by exchange, the action area would include the land to be taken into

¹²¹ BLM Handbook H-2200-1—*Land Exchange Handbook*, p. 6-3.

¹²² For additional information on the Section 7 consultation process, see CRS In Focus IF12423, *Endangered Species Act (ESA) Section 7 Consultation*, by Erin H. Ward and Pervaze A. Sheikh.

¹²³ 16 U.S.C. §§1531 et seq.

¹²⁴ 16 U.S.C. §1536(a)(2). Species are listed as endangered or threatened pursuant to Section 4 of the ESA. 16 U.S.C. §1533. Critical habitat, endangered species, and threatened species are defined in Section 3 of the ESA. 16 U.S.C. §1532(5), (6), & (20).

¹²⁵ 16 U.S.C. §1536(a)(2); 50 C.F.R. §402.01(b). Generally, FWS administers the ESA for terrestrial, freshwater, and catadromous species and the National Marine Fisheries Service administers the act for marine and anadromous species.

¹²⁶ 16 U.S.C. §1536(a)(2); 50 C.F.R. §402.02.

¹²⁷ 50 C.F.R. §402.03.

¹²⁸ 16 U.S.C. §1536(b)(4).

¹²⁹ 50 C.F.R. §402.02.

¹³⁰ *Ibid.*

federal ownership in addition to the land being conveyed and any other areas that may be affected.

Once BLM determines the action area for the disposal, it must determine whether listed species or critical habitat are present in the action area. FWS's "Information for Planning and Consultation" (IPaC) site provides resources to assist federal agencies with determining whether listed species or critical habitat may be affected by a particular project, among other things.¹³¹ BLM may use the IPaC site to assess a particular disposal or seek assistance directly from FWS to make this determination.

If BLM determines that listed species or critical habitat may be present in the action area, it must assess the potential impact the disposal would have on the species and habitat. Depending on the nature of the disposal, BLM may be required to prepare a *biological assessment* or to otherwise provide the Services with "an account of the basis for evaluating the likely effects of the action."¹³² Such an analysis might include examining the effects of removing federal management and any associated protections or requirements that apply only to federal land and the effects of any planned activities on the land following the conveyance. For example, when the U.S. Army Corps of Engineers and the U.S. Forest Service proposed to approve a mining project that would involve an exchange of federal lands for nonfederal lands, FWS considered the proposed future development by the mining company on the conveyed federal land to be an indirect effect of the proposed land exchange.¹³³

When determining a proposed action's potential effects and whether formal consultation is required, BLM may choose to informally consult with the Services on the anticipated effects of a disposal and alternatives for modifying the action to reduce or eliminate anticipated effects on listed species or critical habitat.¹³⁴ When disposing of federal property, BLM may consider, for example, whether to include conditions or reversionary clauses in the deed (if permitted by the authorizing federal law) to provide for the protection of species or habitat.¹³⁵

If BLM concludes the disposal may adversely affect listed species or critical habitat, it must initiate formal consultation with the Service(s) responsible for administering the ESA for the affected species.¹³⁶ BLM then initiates formal consultation by submitting a request in writing to the relevant Service that includes information about the proposed action and its anticipated effects on species and critical habitat.¹³⁷

At the conclusion of formal consultation, the relevant Service issues a *biological opinion* (BiOp) setting forth how the disposal may affect listed species and critical habitat and, specifically, whether it is likely to jeopardize listed species or adversely modify or destroy critical habitat.¹³⁸ If the Service concludes the disposal as proposed is likely to jeopardize listed species or adversely modify critical habitat, it must suggest any RPAs that BLM could take in carrying out the disposal

¹³¹ FWS, "Information for Planning and Coordination," <https://ipac.ecosphere.fws.gov/>.

¹³² 50 C.F.R. §402.12; FWS and National Marine Fisheries Services, Section 3.4: "Biological Assessments," in *Endangered Species Consultation Handbook*, March 1998.

¹³³ FWS, *Biological Opinion: Effects to Canada Lynx, Gray Wolf, and Northern Long-Eared Bat from the Proposed NorthMet Project and Land Exchange*, February 2016, p. 2, <https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/PolyMet/Northmet%20ROD%20App%20C-%20Bio%20opinion.pdf?ver=2019-03-22-085448-887>.

¹³⁴ 50 C.F.R. §402.13.

¹³⁵ A *reversionary clause* requires the land to revert to federal ownership if the federal government determines the land is not being used in accordance with its specific intended purpose.

¹³⁶ 50 C.F.R. §402.14.

¹³⁷ 50 C.F.R. §402.14(b).

¹³⁸ 16 U.S.C. §1536(b)(3); 50 C.F.R. §402.14(h).

that would not violate the ESA.¹³⁹ Provided the Service concludes the disposal will not jeopardize listed species or adversely modify critical habitat—or identifies RPAs—then the BiOp includes an *incidental take statement* that specifies the anticipated impact of any incidental take of the species and operates as a permit to take the species without violating the ESA.¹⁴⁰ The incidental take statement also includes RPMs as necessary to minimize the impact on the species, as well as terms and conditions to implement such measures that the federal agency must abide by to receive the benefit of the effective permit.¹⁴¹

National Historic Preservation Act Section 106 Requirements¹⁴²

Real property disposals typically are considered to be *undertakings* subject to the review process under Section 106 of the NHPA and its implementing regulations promulgated by the Advisory Council on Historic Preservation (ACHP).¹⁴³ Section 106 requires federal agencies to review the potential impacts of their actions on *historic properties* and consult with interested parties to seek ways to avoid, minimize, or mitigate any adverse effects.¹⁴⁴ Section 106 reviews generally follow a four-step process: (1) initiation, in which the agency determines whether the action is an undertaking subject to review; (2) identification of historic properties in the area of potential effects;¹⁴⁵ (3) assessment of whether the action would cause adverse effects to historic properties; and (4) resolution between parties on steps to address any adverse effects. Throughout the Section 106 process, federal agencies must consult with various entities—such as the state historic preservation officer (SHPO) or tribal historic preservation officer—to determine whether the relevant historic properties have been identified and to consider solutions to address potential adverse effects on those properties.

Regulations allow federal agencies to work with the ACHP to tailor the Section 106 process to meet their needs and develop alternate methods to meet their obligations under the NHPA.¹⁴⁶ In 1997, BLM executed a national programmatic agreement (nPA) with the ACHP and the National Conference of State Historic Preservation Officers to guide the BLM’s planning and decisionmaking as it affects historic properties and to outline the manner in which the agency will comply with its Section 106 responsibilities. The nPA subsequently was revised and signed in

¹³⁹ 16 U.S.C. §1536(b)(3).

¹⁴⁰ 16 U.S.C. §1536(b)(4).

¹⁴¹ *Ibid.*

¹⁴² For additional information on the Section 106 process, see CRS Report R47543, *Historic Properties and Federal Responsibilities: An Introduction to Section 106 Reviews*, by Mark K. DeSantis.

¹⁴³ 54 U.S.C. §§300101 et seq. The Advisory Council on Historic Preservation (ACHP) is an independent agency comprised of federal, state, and tribal government members, as well as experts in historic preservation and members of the public. Through its authority under NHPA, the ACHP promulgated regulations for the Section 106 process found at 36 C.F.R. Part 800.

¹⁴⁴ A *historic property* is defined in 54 U.S.C. §300308 as “any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register of Historic Places, including artifacts, records, and material remains relating to the district, site, building, structure, or object.”

¹⁴⁵ As defined in 36 C.F.R. §800.16(d), the *area of potential effects* is “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.”

¹⁴⁶ 36 C.F.R. §800.14.

2012.¹⁴⁷ The agreement authorizes the development of state-specific protocol agreements between BLM state offices and SHPOs that set forth measures for alternative compliance for certain types of actions in 11 states.¹⁴⁸ Specifically, these protocols allow for “streamlined (as opposed to case-by-case) consultation” for undertakings that are determined to have no adverse effect on historic properties or for scenarios in which BLM and the relevant SHPO reach an agreement on the resolution of such adverse effects.¹⁴⁹ The nPA also established a Preservation Board composed of BLM historic preservation experts and line officers that provide policy recommendations to BLM managers at the local, state, and national levels. BLM policies and procedures—contained in agency manuals and handbooks—provide further direction on the agency’s responsibilities under Section 106 and how to implement the nPA and state-specific protocol agreements.¹⁵⁰

In general, the time needed—and the analysis required—to comply with Section 106 is contingent on the scale, complexity, and particulars of the project in question. For land disposals, such factors could include the geographic footprint of the proposed disposal, whether an area identified for disposal has been previously inventoried for historic properties, or whether any legal covenants or protections apply to the land or properties in question.¹⁵¹ In addition, agencies often coordinate Section 106 compliance with other federal review processes, such as those required by NEPA.¹⁵² As a result, it can be difficult to distinguish between requirements and the compliance timeline associated with NEPA and requirements that must be met under separate statutory mandates, such as Section 106.

¹⁴⁷ BLM, “Programmatic Agreement Among the Bureau of Land Management, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which the BLM Will Meet Its Responsibilities Under the National Historic Preservation Act,” 2012, <https://www.blm.gov/sites/blm.gov/files/National%20Programmatic%20Agreement.pdf> (hereinafter “BLM, “National Historic Preservation nPA”). The 2012 agreement was set to expire after a period of 10 years, with an option for renewal in 2-year increments. In 2022, the ACHP, BLM, and National Conference of State Historic Preservation Officers executed a two-year extension to the nPA. In 2023, BLM announced a proposed revision to the nPA based on tribal, public, and signatory consultation and to extend it an additional 10 years. As of May 1, 2024, the revision process was not yet completed. In February 2024, the signatories executed another two-year extension to the nPA. The agreement is set to expire on February 9, 2026.

¹⁴⁸ The 11 states authorized to execute state-specific protocol agreements are Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, and Wyoming. Protocol agreements can be found at ACHP, “BLM Completes Revision of All State Protocols,” <https://www.achp.gov/BLM/State%20Protocols>.

¹⁴⁹ BLM, “National Historic Preservation nPA.”

¹⁵⁰ For example, see BLM, Manual 1780, *Tribal Relations*; BLM, Handbook H-1780-1, *Improving and Sustaining BLM—Tribal Relations*, release 1-1781, December 15, 2016, https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1_0.pdf; and BLM, Manual Series 8000, *Recreation & Cultural Programs*.

¹⁵¹ Examples of BLM land disposals illustrate the range of associated NHPA analysis and documentation. For instance, the proposed exchange of 719 acres of BLM lands to the J. R. Simplot Company (Simplot) in exchange for 667 acres of nonfederal land required the agency to contract a third party to conduct a full class III cultural resource survey (see BLM, “BLM National NEPA Register: Documents,” <https://eplanning.blm.gov/eplanning-ui/project/119626/570>). (Class III surveys are the most intensive field surveys and are intended to locate and record all historic properties in a given area.) By contrast, because BLM previously had conducted a class III survey as part of a broader 46,700-acre proposed conveyance analyzed in 2004 (see BLM, *2004 Final Las Vegas Valley Disposal Boundary Environmental Impact Statement (FEIS)*), the direct sale of a 10-acre parcel of land to the city of Henderson, NV, in 2018 did not require additional analysis (see BLM, “BLM National NEPA Register: 1 Parcel City of Henderson Direct Sale,” <https://eplanning.blm.gov/eplanning-ui/project/103848/510>).

¹⁵² In particular, regulations encourage federal agencies to use their broad environmental review process, carried out under NEPA, as an “umbrella” compliance process. Regulations for the coordination of the Section 106 process with NEPA can be found at 36 C.F.R. §800.8. Discussion of NEPA as an umbrella compliance process can be found at ACHP, “Integrating NEPA and Section 106,” https://www.achp.gov/integrating_nepa_106.

Appraisals

BLM typically obtains an appraisal of market value for land disposals under FLPMA, whether by sale or exchange.¹⁵³ Both federal employees and contractors conduct appraisals.¹⁵⁴ Appraisals are guided by law, regulation, and other authorities, including the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.¹⁵⁵

FLPMA specifies that lands may not be sold at less than their fair market value.¹⁵⁶ BLM regulations state that an exchange of lands must be based on the market value of the federal and nonfederal lands.¹⁵⁷ For FLPMA sales and exchanges, market value typically is based on the highest and best use of the property—that is, the highest and most profitable use for which the property is physically adaptable and needed or likely to be needed in the future.¹⁵⁸ Market value is based on an economic assessment of the highest and best use. The appraiser is to estimate the value of the lands as if in private ownership and available for sale in the open market, and must include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities that are reflected in prices paid for similar properties in the competitive market. Interests in land—such as minerals or water rights—are considered to the extent consistent with highest and best use. In the absence of current market information, other methods may be used to estimate market value.¹⁵⁹

The appraiser prepares a report estimating market value that describes the work conducted and sets forth the information and analysis supporting the estimate, among other information. Each appraisal report is assessed by a review appraiser. FLPMA provides that disputes over the appraised values of lands to be exchanged can be resolved by arbitration, bargaining, or other methods.¹⁶⁰

Under RPPA, although lands generally are sold or leased for less than market value or for free, some lands are sold or leased based on a formula that depends on an appraisal to determine

¹⁵³ Some BLM authorities and related appraisal guidance use the term *market value*, and others use the term *fair market value*. In this section, the terms are used interchangeably.

¹⁵⁴ DOI, Appraisal and Valuation Services Office, is the lead federal office for conducting appraisals of BLM land and nonfederal land that is part of an exchange with BLM. For information on the work of the office, see the DOI website at <https://www.doi.gov/valuationservices>.

¹⁵⁵ See The Appraisal Foundation, *Uniform Appraisal Standards for Federal Land Acquisitions, 2016*, on the website of the Department of Justice at Uniform Appraisal Standards for Federal Land Acquisitions ([justice.gov](https://www.justice.gov)). Hereinafter referred to as Appraisal Foundation, *Uniform Appraisal Standards*. Although the document specifies appraisals for acquisitions, it also is used for disposals. For instance, BLM regulations at 43 C.F.R. §2710.0-6(f) state that for FLPMA land sales, “value is to be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the Uniform Appraisal Standards for Federal Land Acquisitions.”

See The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice, 2024*. This document contains ethical and performance standards for the appraisal profession. For additional information on the document, see The Appraisal Foundation, “What Is USPAP?,” https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbfa-41b3-9878-fac35923d2af.

¹⁵⁶ 43 U.S.C. §1713(d).

¹⁵⁷ 43 C.F.R. §2200.0-6(c).

¹⁵⁸ Appraisal Foundation, *Uniform Appraisal Standards*, p. 22.

¹⁵⁹ Information in this paragraph is derived from 43 C.F.R. §2201.3–2 for exchanges and, more generally, *Uniform Appraisal Standards*, including pp. 22–24.

¹⁶⁰ 43 U.S.C. §1716(d). Regulations governing bargaining and arbitration for exchanges are at 43 C.F.R. §2201.4.

market value. For instance, BLM may sell or lease land to a nonprofit entity at 50% of market value (or 90% if the use is not open to the public).¹⁶¹

Factors Contributing to Length of Disposal Process

There is no general statutory timeline for BLM to dispose of lands. The length of time to complete disposals varies widely among transactions, with some completed in months, others in one or two years, and still others several years or more. Further, there is no general statute governing the order in which BLM land disposals are undertaken. Instead, disposals are based primarily on agency priorities and workload.

BLM disposals generally must comply with various statutory and regulatory requirements and policies, unless exempted by Congress. Such requirements include those set out in this report, namely BLM land use planning; notification, consultation, and coordination requirements; ESA Section 7 consultations; NHPA Section 106 reviews; NEPA analyses; CERCLA environmental site assessments and remediation of contamination if needed; and land appraisals, among others. The number, variety, and components of these requirements are major factors in the time to complete disposals, although in some cases the requirements are undertaken simultaneously or with partial overlap. Even if not exempted by Congress, disposals mandated by Congress may reduce the extent of BLM discretion in disposing of the land and thereby may result in a more limited and potentially faster version of certain analyses, such as NEPA and ESA Section 7.

The attributes and variables of the lands themselves also contribute to the time to complete disposals. Challenges may arise where there is a wide variety of resources and land uses on the BLM parcels to be conveyed. Challenges also may arise related to the nonfederal lands to be acquired by exchange, such as environmental hazards or infrastructure on the lands, and title ambiguities, among others.

A parcel of land generally must be identified for disposal in an RMP for BLM to convey it.¹⁶² Thus, additional time would be involved in amending an RMP to specify a parcel that had not been identified previously.

The authority used to dispose of land can affect the length of the process. For example, some disposals under RPPA may take less time because they do not require an appraisal to determine value. Instead, they are made at no cost or through special (fixed) pricing.

Exchanges

Estimates of the time to complete land exchanges have varied. The most recent estimates produced and made available by government agencies appear to have been issued more than a decade ago. The BLM *Land Exchange Handbook* estimated an average completion time of 18 to 24 months for 26 actions related to BLM exchanges. The source also noted that times may vary widely, from two months to several years for development of exchange proposals, with additional time for other actions such as evaluating the feasibility of proposals.¹⁶³ A 2009 report of the Government Accountability Office determined that BLM completed 38 exchanges between October 2004 and June 2008, with an average completion time of four years from the time an

¹⁶¹ BLM RPPA Information Sheet, p. 2. In other cases, BLM sells or leases lands under RPPA through other methods, such as for free or through special (fixed) pricing.

¹⁶² BLM, “*Lands Potentially Available for Disposal*,” <https://www.blm.gov/programs/lands-and-reealty/land-tenure/lands-potentially-for-disposal>.

¹⁶³ BLM, Handbook H-2200-1, *Land Exchange Handbook*, p. 1-15.

agreement to initiate an exchange was signed between BLM and the other parties to the exchange.¹⁶⁴ More recently, BLM staff estimated that after formal initiation, a nongovernmental exchange that is relatively straightforward might be completed on average in 18 months to 24 months. However, they indicated that additional research would be needed to estimate with more certainty.¹⁶⁵

In general, exchanges can be more time consuming than transactions involving only disposal of BLM land. This is because they involve two transactions—a disposal of BLM land and an acquisition by BLM of nonfederal land. On the complexities of exchanges, the BLM *Land Exchange Handbook* states,

Proper consideration of land exchange proposals involves a substantial investment of time and resources by both Federal and non-Federal parties. Land exchange processing is often highly complex because of the wide range of individuals and entities that hold some form of valid right, title, or interest in the land being considered for exchange, determining land values, weighing public interests and effectively involving the public in the process.¹⁶⁶

In effect, an exchange could double the requirements for consultation, evaluation, and appraisal, among other requirements. Further, the FLPMA requirement for equal value exchanges can be difficult to achieve.¹⁶⁷ The most complicated exchanges often involve tribes or state or local governments.¹⁶⁸ Such transactions require compliance both with authorities applicable to the federal lands and authorities applicable to the lands of the other government. Due to their intricacies, some exchanges have been facilitated by third parties and/or conducted in multiple phases.

Staffing Capacity

The number, availability, and expertise of BLM realty staff can affect the length of the disposal process. BLM realty staff generally have broad responsibilities that may compete for their time to conduct exchanges. These responsibilities may include assistance with issuing permits, implementing land withdrawals, acquiring lands, and issuing rights-of-way, among other activities. Some BLM field offices may have one or a few realty specialists responsible for managing transactions affecting hundreds of thousands or even millions of acres of BLM land. Further, the complexity of some land disposals can require deep expertise, and it may take several years for realty staff to become capable of handling such processes independently. Retirements and other departures of BLM realty staff may have impacted the capacity to process disposals.¹⁶⁹

Similarly, DOI's capacity to conduct land appraisals can affect the length of the land disposal process. DOI has cited an insufficiency of appraisers as contributing to delays in land appraisals.¹⁷⁰ The DOI Appraisal and Valuation Services Office (AVSO) is the lead federal office for conducting appraisals for BLM and other DOI agencies. According to DOI, “[l]ack of staff has a direct impact on the timely delivery of appraisals to clients and improvement in the timeliness of service remains a top goal for AVSO as we continue to fill vacant appraisal

¹⁶⁴ Government Accountability Office, *Federal Land Management: BLM and the Forest Service Have Improved Oversight of the Land Exchange Process, but Additional Actions Are Needed*, GAO-09-611, June 2009, p. 14.

¹⁶⁵ CRS consultation with BLM staff on September 18, 2023.

¹⁶⁶ BLM, Handbook H-2200-1, *Land Exchange Handbook*, p. 1-1.

¹⁶⁷ For details on the equal value requirement, see the discussion of FLPMA in the “Exchanges” section of this report.

¹⁶⁸ CRS consultation with BLM staff on September 18, 2023.

¹⁶⁹ Information in this paragraph is derived in part from CRS consultation with BLM staff on September 18, 2023.

¹⁷⁰ DOI, *Budget Justifications and Performance Information, Fiscal Year 2024*, Office of the Secretary, Departmentwide Programs, pp. DO-93–DO-94.

positions.”¹⁷¹ DOI cited a profession-wide problem of a decrease over the past decade in the pool of appraisers to recruit from, together with no increase in people entering the profession. DOI identified actions being taken to address this deficiency, including special pay efforts, staff training, implementation of workplace efficiencies, and development of an apprenticeship program.

Congressional Role in Disposal of BLM Lands

Congress often faces questions regarding the adequacy of RPPA, FLPMA, and other BLM disposal authorities; the nature, extent, and location of their use; and the extent of BLM land ownership overall. These questions form the backdrop for congressional consideration of measures to establish, eliminate, or modify authorities as well as measures to dispose of specific BLM lands. For example, with regard to the establishment of new authorities, legislation introduced in the 117th Congress sought to authorize certain states to apply to relinquish land grant parcels in exchange for federal lands managed by BLM.¹⁷² With regard to the elimination of authorities, moratoria on issuing mineral patents under the General Mining Law of 1872 have been included in annual appropriations laws since FY1995, as noted.¹⁷³ With regard to the modification of authorities, for example, the 117th Congress amended RPPA to specifically authorize disposal to federally recognized Indian tribes.¹⁷⁴

In addition, Congress frequently considers legislation governing the disposal of specific parcels of BLM land. For example, provisions of P.L. 117-263 authorized exchanges of BLM and private land in Churchill County, NV, and directed conveyance of BLM parcels to Lander County, NV, for use for airport facilities, watershed protection, recreation, and parks.¹⁷⁵ In general, Congress might consider disposal legislation to provide BLM with authority in a particular situation when such authority is lacking, based on its evaluation of public needs. Congress also might seek to direct specific transactions, although BLM already has authority to dispose of lands, in order to facilitate the transactions. Further, Congress may seek to modify the applicable requirements by authorizing or directing actions not ordinarily permitted under an agency’s authority to dispose of land. For instance, it might expedite the disposal process by including provisions that limit assessment and evaluation requirements or authorize the conveyance of land at reduced or no cost rather than at fair market value.

Congress also addresses disposal policy in the context of deliberations on the role and goals of the federal government in owning and managing land generally. Stakeholders have differing views on when federal ownership of lands is appropriate and how federal lands should be managed.¹⁷⁶ For example, some stakeholders contend that there is excessive federal influence over western lands and economies and that the federal government should divest itself of many lands. Other stakeholders support the policy of retaining lands in federal ownership on behalf of the public and sometimes advocate adding more lands to enhance protection. Recent Congresses considered

¹⁷¹ *Ibid.*, p. DO-94.

¹⁷² H.R. 2348, 117th Congress.

¹⁷³ Patent applications meeting certain requirements filed on or before September 30, 1994, have been allowed to proceed. See, for example, Consolidated Appropriations Act, 2024 (P.L. 118-42). Division E, Title IV, §404.

¹⁷⁴ RPPA was amended by provisions of the Consolidated Appropriations Act, 2023, at P.L. 117-328, Division DD, Title I, §104.

¹⁷⁵ P.L. 117-263, Division B, Title XXIX, §2908 (Churchill County, NV) and §2922 (Lander County, NV).

¹⁷⁶ As an example of varied stakeholder perspectives, see Property and Environment Research Center (PERC), “Should Federal Lands be Transferred to Western States? A PERC Forum,” July 27, 2017, <https://www.perc.org/2017/07/27/should-federal-lands-be-transferred-to-western-states/>.

diverse bills pertaining to the extent of federal land ownership. Among other proposals, legislation in the 118th Congress would direct federal agencies with a net increase in lands through acquisition to offer an equal amount of land for sale.¹⁷⁷

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¹⁷⁷ H.R. 172, 118th Congress.