

**Exhibit A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

MONTANA WILDERNESS ) CV 07-39-M-DWM  
ASSOCIATION, et al., )

Plaintiffs )

vs. )

TOM TIDWELL, et al., )

Defendants )

and )

TREASURE STATE ALLIANCE, et al. )

Defendant-Intervenors. )

**DECLARATION OF  
ROBERT DENNEE**

---

CITIZENS FOR BALANCED USE, et al., )

Plaintiffs, )

vs. )

REBECCA HEATH, et al., )

Defendants. )

CV 07-59-BLG-DWM

I, ROBERT DENNEE, in accordance with the requirements of 28 U.S.C. section 1746 declare:

1. I am employed by the United States Department of Agriculture, Forest Service as the Lands Program Manager for the Gallatin National Forest. I have been employed in that position since 1992. I also participated in preparing the Gallatin

National Forest Travel Management Plan and associated Environmental Impact

Statement. My responsibilities in this effort included:

(a) I participated in preparing the “**FOREST-WIDE GOALS, OBJECTIVES, STANDARDS AND GUIDELINES**”, in particular GOAL B- Access, and Objectives B-1 through B-9, which contain direction and guidance for providing and maintaining reasonable, legal access to National Forest System (NFS) lands. Detailed Description of the Decision at I-3 – I-10 (Excerpts attached as Appendix A to this Declaration).

(b) I participated in preparing the “**Forest Access Objectives**” and “**Description of Access Needs**,” Detailed Description of the Decision at I-4 – I-8 (Excerpts attached as Appendix A to this Declaration), which lists, displays and describes geographic locations where additional road, trail and trailhead access rights (both public and administrative) to certain NFS lands are needed;

(c) I prepared a comprehensive overview (‘white paper’) that describes the Land Ownership Adjustment Program on the Gallatin National Forest (Excerpts attached as Appendix B to this Declaration);

(d) I prepared a “briefing paper” discussing the fact that Forest Service travel management decisions and restrictions are subject to valid rights and privileges held by private landowners and other authorized parties to use certain NFS roads and trails, for which general public use may be restricted in the travel management process (Excerpts attached as Appendix C to this Declaration);

2. Some of the NFS roads and trails on the Gallatin National Forest (and on the National Forests throughout the western United States) were established in the late 1800s and early 1900s. Since that time, these historic roads and trails have been maintained,

signed, managed and used for Forest Service management purposes and public recreational activities.

3. A portion of this existing road and trail system crosses intermingled private lands. In many cases, these roads and trails provide the only access to adjoining federal lands. Only a portion of the existing roads, and relatively few of the existing trails crossing private lands are covered by recorded easements.

4. It is the Forest Service position that the United States, on behalf of the public, has an easement interest in these roads and trails due to the historic and ongoing public and administrative use and maintenance. The public is the beneficiary of this right of access and the Forest Service defends and maintains that right.

5. The Forest Service continues to work with landowners, public interest groups, local, state and tribal governments, and other Federal agencies to address concerns with public use of roads and trails across private lands.

6. Forest Service direction and policy is to acquire perpetual road and trail easements across non-NFS lands needed to assure adequate management and protection of National Forest resources and values. Federal Land Policy and Management Act of October 21, 1976, Section 205 (43 U.S.C. § 1715); 36 C.F.R. Pt. 212; Forest Service Manual 5460 – Rights-of-Way Acquisition.)

7. In situations where continued use of a historical road or trail access route is challenged or closed, Forest Service direction and policy is also to take actions necessary to protect the existing access rights to NFS lands.

8. The Porcupine - Lowline trail system, including Trails #195, #258, #267 and #272, is located on the southwest side of the Crazy Mountains. This system of existing

historic trails crosses intermingled private and NFS lands and it continues to provide needed access to NFS lands for public recreation and for administrative purposes.

9. In the Gallatin National Forest's Motor Vehicle Use Map, the Forest Service has chosen to identify the Porcupine – Lowline trail system, as well as several other trail systems crossing private lands, because the Forest Service believes the United States has an "easement interest" in this trail system, and the Forest Service has a responsibility to manage this trail system under the Forest's Travel Management Plan.

10. The Forest Service recognizes that easement rights have not been "perfected" on certain portions of the Porcupine – Lowline Trail system, as well as other trail systems crossing private lands. For that reason, the Forest's Travel Management Plan, "Table I-3, Forest Access Objectives", identifies the need to perfect trail access rights across private lands for the Porcupine – Lowline trail system. See Detailed Description of the Decision at I-4, Ibex TPA - Crazy Mountains (Excerpts attached as Appendix A to this Declaration). Perfection could take many forms from quieting title to a pre-existing easement to a new grant to document the historic public use.

11. During recent years (2004 through 2007), the Forest Service (Gallatin National Forest) has made a concerted effort to work cooperatively with the Guths, Zimmermans and other private landowners in the southwest portion of the Crazy Mountains, to address their concerns about the location and public use of the Porcupine – Lowline Trail system across private lands. Forest Service representatives met with landowners Chloris Guth Zimmerman and Ned Zimmerman in 2004 and in 2005, and offered to explore relocation of portions of this trail system to address landowner concerns. In July 2006, the Forest Service scheduled a meeting on site with Ned

Zimmerman to look at potential relocation of the trail system. However, Mr. Zimmerman notified the District Ranger that he was busy with haying and was not available to meet at that time, and he has not contacted the Forest Service to reschedule the meeting.


12. Landowners Chloris Guth Zimmerman and Ned Zimmerman appealed the Decision for the Forest Travel Management Plan (appeal # 07-01-00-0126).

13. In an Appeal Resolution Meeting on February 2007, Deputy Forest Supervisor John Allen, Livingston District Ranger Ron Archuleta, and I met with Chloris Zimmerman, Ned Zimmerman, and attorney Paige Dringman. The Forest Service acknowledged and agreed that the Forest Travel Plan, in and of itself, does not establish nor perfect access rights. The parties mutually agreed that further discussion would be productive toward resolving the appeal and the landowner concerns about the Porcupine – Lowline trail system.

14. As stated repeatedly, the Forest Service remains sincerely interested in working with the Zimmermans and other landowners to address their concerns and to explore solutions, including trail relocation.

Pursuant to the provisions of 28 U.S.C. Sec. 1746 I declare under penalty of perjury that the foregoing is true and correct.

November 16, 2007

  
ROBERT DENNEE  
Gallatin National Forest  
Lands Program Manager

**Robert Dennee Declaration**  
**Appendix A**  
**11/16/07**

- Motorized wheeled cross-country travel may be allowed for other government entities and contractors on official administrative business subject to authorization from a line officer.

**STANDARD A-9. Trail Vehicles.** Motorized vehicle use on designated trails shall be limited to the vehicles described below:

**ATV:** Any motorized, off-highway vehicle 50 inches or less in width, having a dry weight of 600 pounds or less that travels on three or more low-pressure tires with a seat designed to be straddled by the operator. Low-pressure tires are 6 inches or more in width and designed for use on wheel rim diameters of 12 inches or less, utilizing an operating pressure of 10 pounds per square inch (psi) or less as recommended by the vehicle manufacturer. [FSH 2309.18(05.5)]

**Motorcycle:** A motorized vehicle 50 inches or less in width, with two wheels in-line with the direction of travel. In addition to conventional trail motorcycles, this class of vehicle also includes scooters and mini-bikes.

**Snowmobile:** A motorized vehicle 50 inches or less in width, designed for use over snow, runs on a track and uses one or more skis for steering.

**STANDARD A-10. Winter Wheeled Vehicle Restriction.** All wheeled vehicles shall be prohibited from traveling on groomed or marked snowmobile or ski trails from December 1<sup>st</sup> to April 15<sup>th</sup> annually.

**STANDARD A-11. Snowmobile Prohibition on Ski Trails.** Snowmobiles shall be prohibited from traveling on groomed cross-country ski trails unless the machine is being used for authorized grooming activities.

**GUIDELINE A-12. Implementation.** Newly designated routes for passenger cars, 4x4's, and ATV's, may remain closed to such uses until the facilities meet applicable engineering design standards.

**GOAL B. Access.** Provide and maintain reasonable, legal access to Gallatin National Forest lands to provide for human use and enjoyment and to protect and manage Forest resources and values.

**OBJ. B-1. Acquire Perpetual Easements.** Acquire, across non-National Forest System (NFS) lands, perpetual road and trail easements needed to assure adequate protection, administration and management of National Forest resources and values.

**OBJ. B-2. Acquire All Rights Needed.** Acquire all interests and rights needed to meet the objectives and future uses of the National Forest System.

**OBJ. B-3. Access Locations.** Obtain and protect public and/or administrative access rights in locations as identified in attached Table I-3.

**Table I-3. Forest Access Objectives**

Map Designation-1	Resolves External Access Needs	Resolves Internal Access Needs	<b>Table I-3 Forest Access Objectives</b>	
			<b>Description of Access Needs</b>	
<b>AB Wilderness TPA – Absaroka/Beartooth Range</b>				
A2		YES	Perfect trail access across private in-holdings within the Wilderness near Palmer Mountain. Includes existing trails: Low Specimen #84, Pine Creek #627.	
<b>Bangtails TPA – Bangtail Range</b>				
A3		YES	Acquire administrative road access on existing Miles Creek Road #1740 into NFSL section 30 in the Grouse Creek area.	
A2 A3		YES	Acquire administrative road and public trail access across private in-holding in section 4 within the Bangtail Creek area.	
A2		YES	Perfect Trail access across private land for the final constructed location on the Bangtail Divide Trail #504.	
<b>Bear Canyon TPA – Gallatin Range</b>				
A2		YES	Perfect trail and trailhead access across private in-holdings and State DNRC lands. Includes existing trails: Bear Loop #440 and the Bear Loop Divide #441.	
A3		YES	Acquire administrative road access from Newman County Road to NFSL on an existing alternate route.	
A2	YES		Acquire trail and trailhead access to the rock climbing area north of I-90 in section 19 near the Trail Creek Exit.	
A2	YES		Acquire trail and trailhead access into NFSL from Trail Creek County Road near I-90. Connect to Chestnut Mountain Trail #458.	
A3	YES		Acquire administrative road access into the Chestnut Mountain area south of I-90 through private lands in sections 28 and 29 from the Trail Creek County Road.	
<b>Big Sky TPA – Madison Range</b>				
A2		YES	Perfect trail and trailhead access across private lands to NFSL from NFSR #166B. Includes existing Trail: North Fork Ridge #403.	
A2		YES	Perfect trail access across private lands in the Beehive Basin area. Includes portions of existing Trails: North Fork Ridge #403, North Fork Tie #402, and Beehive Basin #40.	
A2		YES	Perfect Trail access across private land for the final constructed location on the First Yellowmule Trail #162 and the Second Yellowmule Trail #42.	
<b>Bozeman Creek TPA – Gallatin Range</b>				
A2		YES	Perfect trail access across City of Bozeman in-holdings. Includes existing trails: Bozeman Creek #454, Hood Lick #436.	
A2	YES		Perfect trail access across State DNRC Lands into the New World Gulch area. Includes existing trails: New World Gulch #50, Moonshine #438.	
<b>Bridger Canyon TPA – Bridger Range</b>				
A1		YES	Acquire road access from Bridger Bowl parking area south into NFSL section 30.	
A2		YES	Perfect trail access across private in-holdings in the Bridger Bowl area. Includes existing trail: #528.	



Map Designation-1	Resolves External Access Needs	Resolves Internal Access Needs	<p style="text-align: center;"><b>Table I-3 Forest Access Objectives</b></p> <p style="text-align: center;"><b>Description of Access Needs</b></p>
A2 A3	YES		Acquire administrative road and public trail access into the southeast corner of the Bridger Mountains near the Pine Creek area.
<b>Cherry Creek TPA – Madison Range</b>			
A2	YES		Acquire trail access from the Bear Trap Trail (BLM) across private and State DNRC lands into NFSL in the Bear Trap Creek area.
A2		YES	Perfect trail access across private checkerboard lands. Includes existing trails: Cherry Creek #401, Cherry Lake #408, Sweden Creek #406, Placer Creek #405, North Fork Spanish Creek #446, Little Hellroaring Creek #400, and Carpenter Creek #317.
A3	YES	YES	Acquire administrative road access to NFSL and across checkerboard private lands.
<b>Cooke City TPA – Beartooth Range</b>			
A1		YES	Perfect road access across patented mineral claims.
A2		YES	Perfect trail access across patented mineral claims.
<b>Deer Creeks TPA – Beartooth Range</b>			
A1	YES	YES	Provide permanent road access to the NF boundary and across private inholdings in the Cherry Creek area.
<b>East Boulder TPA – Beartooth Range</b>			
A1		YES	Resolve access issues on the Dry Fork Road #6645.
A2		YES	Perfect/Resolve trail access issues across private in-holdings. Includes existing trail: Green Mtn #94.
<b>East Crazies TPA – Crazy Mountains</b>			
A1	YES		Acquire road access to the NF boundary in the American Fork area.
A1	YES	YES	Acquire road access to the NF boundary and across checkerboard private in-holdings in the Sweetgrass area.
A1	YES	YES	Acquire road access to the NF boundary and across checkerboard private in-holdings in the Swamp Creek area.
A1	YES	YES	Acquire road access to the NF boundary and across checkerboard private in-holdings in the southeast portion of the Crazies between Big Timber Canyon and Rock Creek.
A2		YES	Perfect trail access across private in-holdings within Sweetgrass and Big Timber creek drainages. Includes existing trails: East Trunk #115, Sweetgrass #122, Big Timber #119, Sunlight Lake #273, Trespass #268, Middle Fork Sweet Grass #123, Cottonwood Lake #197.
A2		YES	Acquire Trail access to Rock Lake on Rock Creek North #270 in section 11 and to Smeller Lake on Smeller Lake #220 in section 13.
<b>Fairy Lake TPA – Bridger Range</b>			
A2		YES	Acquire snowmobile trail access across section 25.
<b>Gallatin Crest TPA – Gallatin Range</b>			
A2		YES	Perfect trail access across private in-holdings along the eastern boundary. Includes existing trails: Pole Gulch #182, Mill Fork Hyalite #190, Horseshoe Basin #241, Eightmile #132, Mud Lake #146, Donahue #183.

Map Designation-1	Resolves External Access Needs	Resolves Internal Access Needs	Table I-3 Forest Access Objectives
			Description of Access Needs
A3	YES	YES	Acquire administrative road access to the Forest Boundary in the North Trail Creek Area. Connects with existing Trail: North Fork Trail Creek #443.
<b>Gallatin River TPA – Gallatin/Madison Ranges</b>			
A1		YES	Perfect road or trail access on the Dudley Creek Road #2502 to the Wilderness Boundary.
A2		YES	Perfect trail access across private in-holdings in the Sage Creek and Spring Creek areas. Includes trails: Sage Creek #11 and Skyline #151.
A3		YES	Acquire administrative road access to NFSL across private in-holdings in the Sage Creek area.
<b>Gallatin Roded TPA – Gallatin Range</b>			
A1	YES		Acquire road access to NFSL in the Jack/Ralph Creek Area.
<b>Gardiner Basin TPA – Absaroka Range</b>			
A2		YES	Perfect trail access across private in-holdings in the area. Includes existing trails: Main Bear Creek #364, Pine Creek #627, Palmer Creek #67, Low Specimen #84, and Crevice Creek #302 in sections 22 and 23 near the Park Line.
A1		YES	Perfect road access across private in-holdings, including, but not limited to, the Crevice Mountain area.
<b>Hebgen Lake Basin TPA – Henry Mountains</b>			
A2		YES	Acquire trail access from Highway #287 to Hebgen Lake in the Red Creek area.
<b>Ibex TPA – Crazy Mountains</b>			
A1	YES	YES	Acquire road access to the NF boundary and across checkerboard private in-holdings in the southeast portion of the Crazies between Porcupine Creek and Rock Creek.
A2		YES	Perfect trail access across private in-holdings in the southwest corner of the Crazies. Includes existing trails: Rock Creek North #270, Cottonwood Lowline #272, Horse Creek Tie #269, Porcupine Lowline #267, Trespass #268, North Fork Elk Creek #195, Shields Lowline #258, and Cottonwood Lake #197.
<b>Hyalite TPA – Gallatin Range</b>			
A2	YES		Perfect trail access across MSU Lands into the Kirk Hill area. Consider a long-term cooperative agreement (FS/MSU). Includes existing trails: New World Gulch #50, Moonshine #438.
<b>Main Boulder TPA - Absaroka/Beartooth Range</b>			
A2		YES	Perfect/Resolve trail access issues across private in-holdings. Includes existing trail: Green Mtn #94.
A1	YES	YES	Acquire road access to the NF boundary and across private in-holdings in the Burris Flat area.
A2		YES	Perfect trail access across private in-holdings in the Grouse Creek area. Includes existing trail: Grouse Mtn #14.
<b>Mill Creek TPA – Absaroka Range</b>			
A1 A2	YES		Acquire road or trail access to the NF boundary in the Davis Mountain area.

<b>Map Designation-1</b>	<b>Resolves External Access Needs</b>	<b>Resolves Internal Access Needs</b>	<b>Table I-3 Forest Access Objectives</b>
			<b>Description of Access Needs</b>
A1 A2	YES		Acquire road or trail access to the NF boundary in the Strawberry Creek area.
A1 A2		YES	Perfect road access across patented mineral claims in the Emigrant Gulch area.
<b>Mission TPA – Absaroka Range</b>			
A2		YES	Perfect trail access across private in-holdings in the Davis Creek area. Includes existing trail: Davis Creek #38.
<b>North Bridgers TPA – Bridger Range</b>			
A2		YES	Perfect trail access across checkerboard private in-holdings in the North Bridger and Elkhorn Ridge areas. Includes portions of existing trails: Miller Gulch #520, Troy Creek #521, South Fork Sixteenmile #524, Elkhorn Ridge #522, and Horsethief Mtn #523.
A3	YES	YES	Acquire administrative road access to the NF boundary and across checkerboard private in-holdings throughout the area.
<b>Porcupine/Buffalo Horn TPA – Gallatin Range</b>			
A2		YES	Perfect trail access across State FW&P lands in the lower Porcupine area. Includes existing trails: Hidden Lake Divide #66, Porcupine Creek #34, and First Creek Cutoff #466.
A2		YES	Perfect trail access across State FW&P checkerboard lands in the upper Buffalo Horn Creek, upper Elkhorn Creek, and upper Teepee Creek areas. Includes existing Trails: Ramshorn Lake #160, Upper Ramshorn Lake #150, Buffalo Horn #1, Daly Creek #100, Daly Pass #57, Teepee Creek #39, Crown Butte #95, and Wilson Draw #161.
<b>Sawtooth TPA – Gallatin Range</b>			
A2	YES		Acquire easements for Sawtooth Trail #297 and trailhead through State DNRC Lands.
<b>Taylor Fork TPA – Madison Range</b>			
A2		YES	Perfect trail access across private in-holding in the Upper Taylor Fork area in section 17. Includes existing Trail: Taylor Falls #17.
A2		YES	Perfect trail access across private in-holdings in the Buck Creek area in section 24. Includes existing Trail: Cinnamon Buck #6.
A3		YES	Acquire administrative road access across section 25 in the upper Wapiti area.
<b>Tom Miner/Rock TPA – Gallatin Range</b>			
A1	YES	YES	Acquire road access across private checkerboard in-holdings in the Tom Miner area.
A2		YES	Perfect additional trail access across private in-holdings in the Donahue Creek area. Includes existing Trail: Donahue #183 (south end).
A2		YES	Acquire trail access across private check-board lands in the Donahue Creek area into NFSL section 2.
A3	YES	YES	Acquire administrative road access across private in-holdings in the Donahue Creek area.
<b>West Bridgers North TPA – Bridger Range</b>			
A2	YES		Acquire trail and trailhead access to the NF boundary in the Ross Creek area.
A2	YES		Acquire trail and trailhead access to the NF boundary in the North Cottonwood area to North Cottonwood Trail #545.

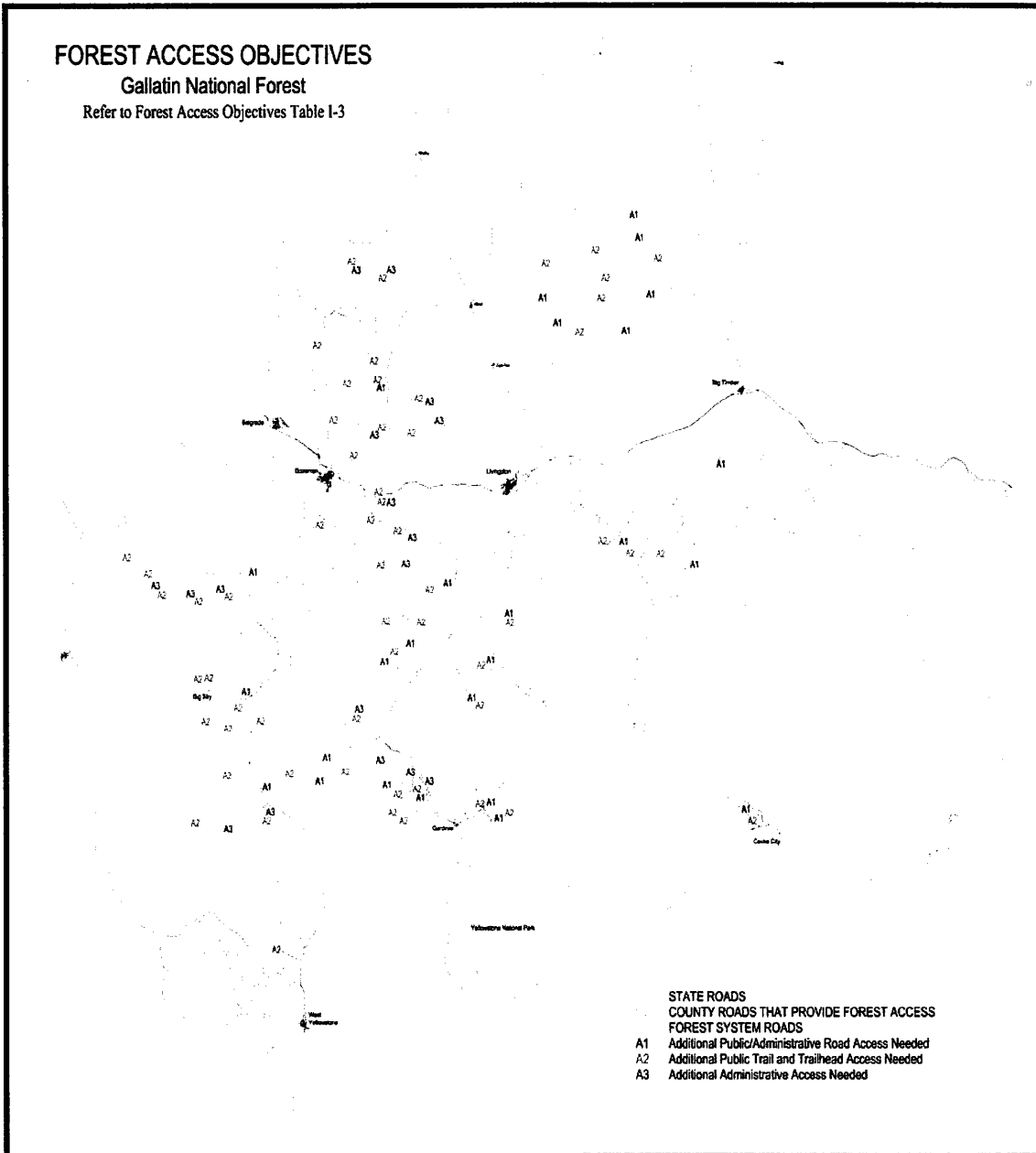
Map Designation-1	Resolves External Access Needs	Resolves Internal Access Needs	<p style="text-align: center;"><b>Table I-3 Forest Access Objectives</b></p> <p style="text-align: center;"><b>Description of Access Needs</b></p>
<b>West Bridgers South TPA – Bridger Range</b>			
A2	YES		Perfect trail and trailhead access across USFWS lands near the “M”. Includes portions of existing Trails: Bridger Foothills #534 and Bridger Ridge #512.
A2	YES		Acquire trail and trailhead access to the NF boundary through the Bostwick Canyon area to the Bostwick Canyon Trail #536.
<b>Yankee Jim Canyon TPA – Absaroka/Gallatin Ranges</b>			
A3		YES	Acquire administrative road access from Highway 89 to the NFSL in the Corwin Springs area.
A2		YES	Acquire a trail access or interconnected NFSL along the Mulherin/Cinnabar Ridge.
A2		YES	Acquire a trail and trailhead access between Mulherin County Road and Aldridge Lake.
A1		YES	Protect/Perfect road access to Aldridge Lake from the east starting from the Yellowstone Trail South County Road.
A3		YES	Acquire administrative road access through section 13 south of Cutler Lake.
A2		YES	Acquire a trail access or interconnected NFSL between the end of the Beattie Gulch Trail #302 to NFSL near Pipeline Creek in section 22.
A1		YES	Acquire administrative road and public road or trail/trailhead access across private in-holdings in Cinnabar Basin Area.
A3		YES	Acquire administrative road access to and across private in-holdings in the Reeder Creek Area from either Tom Miner Road or the Cinnabar Basin Area.
A2		YES	Acquire road and perfect trail access across private lands in the Mulherin Area. Includes Road & TH and Trail: Mulherin #175.
<b>Yellowstone TPA – Gallatin Range</b>			
A1	YES		Acquire road access to the NF Boundary and across private checkerboard in-holdings in the South Dry Creek/Mill Fork Creek area.
A1	YES	YES	Acquire road access to the NF Boundary and across private checkerboard in-holdings in the Pole Gulch, Tie Gulch, and Fridley Creek areas.
A1	YES		Acquire easement on North Dry Road #2613 across MT DNRC Lands in the North Dry area.
A2		YES	Perfect trail access across private checkerboard in-holdings throughout area. Includes existing trails: Pole Gulch #182, Fridley Lake #240, Mud Lake #146, Pole Gulch #182, Eightmile #132.

Note 1: A1 = Additional Public/Administrative Road Access Needed  
A2 = Additional Public Trail and Trailhead Access Needed  
A3 = Additional Administrative Access Only Needed

# FOREST ACCESS OBJECTIVES

## Gallatin National Forest

Refer to Forest Access Objectives Table I-3



**GUIDELINE. B-4. Mutual Transportation Systems.** When there is a recognized need to provide access to intermingled NFS and private lands, cooperate with other landowners to develop a transportation system that serves mutual needs.

**GUIDELINE. B-5. Protect Existing Access Rights.** In situations where continued use of an historical road or trail access route is challenged or closed, take actions necessary to protect the existing access rights to NFS lands, and to protect the jurisdictional status of roads and trails in cooperation with area counties.

**GUIDELINE. B-6. Reciprocity.** In evaluating requests from a landowner for reasonable access across National Forest System lands, and especially in areas where public or administrative access needs exist (Table I-3), consider granting such request contingent upon receiving reciprocal access across the private land.

**GUIDELINE. B-7. Acquire Assignable Rights.** When acquiring road rights-of-way across non-federal lands to access NFS lands, acquire sufficient interests in rights-of-way for roads that are expected to receive residential traffic to enable the future assignment of jurisdiction to an appropriate public road agency.

**GUIDELINE. B-8. Temporary Rights.** In situations where road access is needed across private land to accomplish management actions on NFS lands, acquire easements that are permanent. Consider the use of temporary agreements, such as permits or rental agreements, for immediate, temporary, or limited access only when it can be demonstrated that full and permanent use is not needed.

**GUIDELINE. B-9. Restrictive Rights.** In situations where road access is needed across private land to NFS lands, acquire easements that provide for full multiple use, including use by the public. Administrative-only or other restricted use easement to NFS lands should not be accepted unless adequate public and administrative access already exists in the area. In general, adequate access exists when: (a) Public and administrative access to the NFS lands in the area is similar to that of the private landowner, and (b) The Forest Service has adequate means of access to manage NFS lands and resources now and in the future.

**GOAL C. Administrative Uses.** Retain or establish the means to access Gallatin National Forest lands for the implementation of a variety of administrative and project activities, including but not limited to, law enforcement, timber harvest, reforestation, cultural treatments, prescribed fire, fire suppression, watershed restoration, wildlife and fish habitat improvement, private land access, livestock grazing, and mineral exploration and development.

**OBJ. C-1. Administrative Uses.** Allow for the construction, opening, and/or reconstruction of roads and trails for administrative and project purposes consistent with future decisions made on such proposals in accordance with the National Environmental Policy Act.

**Robert Dennee Declaration**  
**Appendix B**  
**11/16/07**

**DESCRIPTION OF THE  
LAND OWNERSHIP ADJUSTMENT PROGRAM**

**(Land Exchanges, Land Purchases, Donations  
Conservation Easements and Other Land Conveyances)**

**On the  
GALLATIN NATIONAL FOREST**

**Prepared by Bob Dennee, Forest Lands Staff  
March 2006**

**Introduction:**

The purpose of this report is to provide a general description and overview of the Forest Service Land Ownership Adjustment Program (past, present and foreseeable future) on the Gallatin National Forest, including land exchanges, land acquisitions (purchase and donation) and acquisition of conservation easements. It also briefly describes federal land conveyances (sales) under the Small Tracts Act and other Congressional authorities.

To lay the foundation, this report first provides an overview of the history of the Gallatin National Forest. It describes the primary actions and events that led to the establishment of the present-day Gallatin National Forest, and the actions and events that created the intermingled federal and private land ownership pattern within this Forest.

This report describes the Land Ownership Adjustment program on a broad-based (landscape assessment) scale. As such, it discusses the larger, more significant land adjustment projects that have been completed, and projects that are in progress, and those that are reasonably foreseeable in the future.

For more detailed information about any of the numerous individual land adjustment projects completed or being considered on this Forest, readers should consult with the Lands staff and the 5400/5500 records maintained in SO Lands.

**This report may be used as a baseline for cumulative effects analysis in the Forest Travel Plan, and for other future cumulative effects analyses.**

This report is presented in three chapters.



**Chapter I** is an historical overview of the primary actions that led to the establishment of the present-day Gallatin National Forest, and that caused the intermingled federal, state, city and private land ownership configuration within this National Forest.

**Chapter II** provides a general description of the land exchanges, land purchases, land donations and conservation easements that have been completed on the Gallatin National Forest in the past.

**Chapter III** briefly describes the ongoing, and reasonably foreseeable, land adjustment activities on the Gallatin NF. It identifies the geographic areas that will likely be the focus for future land adjustments on this Forest.

## **Chapter I**

### **History of Land Ownership on the Gallatin National Forest**

This chapter provides an overview of the major laws, actions and events that, collectively, have produced the present-day “Gallatin National Forest” boundary and its intermingled public (National Forest System) and private land ownership situation.

The current proclaimed boundaries of the Gallatin National Forest, and the intermingled public and private landownership pattern within it, are the product of a rich history of federal laws and actions that originate with the U.S. Constitution, and include the Acquisition Era (e.g. Louisiana Purchase), the Disposal Era (e.g. federal land grants), and the Reservation Era (e.g. creation of the Forest Reserves and National Forests).

#### **Constitutional Basis for Acquisition and Disposal of Federal Lands:**

The U.S. Constitution provides the fundamental basis for the management, acquisition and disposal of all Federally-owned land and other real property, including National Forest System lands. The Property Clause (Article IV of the Constitution) states: “*The Congress shall have the power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States.*” Therefore, any and all land adjustment actions considered by the Forest Service must be completed under the specific authorities set by Congress, through federal laws and regulations, such as the Federal Land Policy and Management Act (FLPMA).

#### **The Acquisition Era - Louisiana Purchase:**

Most of the federal “**public domain**” lands in Montana, and in much of the western United States, originated from the Louisiana Purchase in 1803. President Jefferson negotiated the purchase of 523 million acres from France for 5 cents per acre. In 1804-1806, the Corps of Discovery traveled west on the Missouri River to explore these newly acquired public domain lands. The Lewis & Clark Expedition named many of the geographic features in Montana, including the Gallatin and Madison Rivers. Montana became a state in 1848.

### **The Disposal Era:**

Between 1776 and 1891, national policy was to settle and develop the west through agricultural and natural resource exploitation, and to raise revenue for a growing country, by disposing of significant amounts of the public domain land. In the Disposal Era, Congress passed a series of laws and policies that resulted in transfer of two-thirds of the original public domain lands from federal to state and private ownership.

The primary early laws and actions that created the landownership pattern within and near the Gallatin National Forest (established later in 1905) are the following:

- **Land Grants to the States.** The Land Ordinances of 1785 transferred Section 16 of each township in Montana to the State for public school purposes. On the Gallatin, present-day Montana DNRC lands originate from these grants.
- **Homestead Acts (1862-1920s).** Under the several homestead laws, a citizen could obtain a free patent for up to 160 acres of land, if they resided on the land and cultivated it for 5 years. On the Gallatin NF, many of the smaller parcels of private land, particularly along streams and meadows, result from homestead patents. For example, many small parcels of private land along the Gallatin River, such as 320 Ranch, result from homesteads. In total, an estimated 30,000 acres within this Forest were patented for homesteads.
- **Mining Laws (1866 and 1872).** These laws statutorily recognized mining as a special use of all federal lands, and allowed free and open exploration of federal lands for mining purposes. The laws allow a person to locate a deposit on public lands, occupy and survey claims, and acquire a patent for \$5 per acre. BLM has the jurisdiction to issue patents.
- On the Gallatin NF, numerous land patents, involving an estimated 50,000 acres of federal land, were issued to private entities under the mining laws. Among the most notable of these patented lands are in the New World Mining District near Cooke City, the Stillwater Mining Company lands in the Boulder River drainage, the Jardine - Crevice Mountain lands near Gardiner, and the Speculator claims in the Absaroka-Beartooth Wilderness. The federal mining laws remain in effect. However a moratorium exists on patenting new mining claims, and by law, no new patents can be issued in wilderness.
- **Railroad Land Grants (1835-1890).** The railroad grants overshadow all other federal land grants in economic and political importance. To encourage development of the West, Congress gave the Northern Pacific Railway a 2,128 mile right-of-way from Duluth to Portland, with 45 million acres of land in a “checkerboard” configuration from 20 to 80 miles wide. Within the present Gallatin National Forest boundary, Congress granted an estimated 350,000 acres of “checkerboard” lands to the railroad companies. Railroad sections were located in all five mountain ranges – Bridger-Bangtails, Gallatin, Madison, Crazies and Absaroka. Ownership of most of the original railroad lands has transferred over several decades to Burlington Northern Railroad Company (BN), and then to its corporate subsidiary, Plum Creek Timber Company (PCTC).

Throughout the 1900's, BN and PCTC managed its checkerboard lands for profit, mainly through commercial timber production, grazing and related commodity uses. In so doing, the companies built a substantial amount of low standard roads across intermingled NFS and private lands to access the private timber, particularly in the Bridger-Bangtails, South Rock Creek, East Gallatin, Big Sky, and Taylor Fork/Buck Creek areas.

Over a period of nearly 100 years, NP, BN and PCTC sold a significant amount (roughly 200,000 acres) of their grant lands within this Forest to various private parties. Most of the intermingled sections in the Crazies, North Bridgers, Battle Ridge, Spanish-Cherry Creek area, Wineglass, Paradise Valley and Tom Miner-Cinnabar Basin areas were sold in the early to mid 1900s, mainly to ranchers in those areas.

In the Buffalo Horn – Teepee Creek area north of Yellowstone Park, the State of Montana (Fish and Game Department) purchased some railroad lands for wildlife habitat. In the Bozeman Creek drainage, the City of Bozeman acquired railroad lands for watershed purposes. More recently, Big Sky Resort and 320 Ranch (Brask) purchased some of the former railroad lands from BN and PCTC.

Often, the purchasers of these railroad lands did not acquire the mineral estates. The mineral estate associated with the checkerboard land was often severed through corporate splits of the railroad companies. Today, most of the severed minerals are owned by Burlington Resources in Texas. This is a complex situation, and careful study of title information is required for each affected land parcel.

In 1992, PCTC sold all of its remaining checkerboard lands on the Gallatin NF (approximately 130,000 acres) to a real estate investment group named Big Sky Lumber Co. (BSL). Between 1993 and 2003, with assistance from conservation partners and the Montana Congressional delegation, the Forest Service and BSL completed two major legislative land exchanges and several land purchases. These land adjustments enabled the consolidation of nearly 101,000 acres of former railroad lands into public ownership on this Forest. This land consolidation effort is described in more detail in Chapter II.

Collectively, these early land disposal laws and actions significantly affected the land ownership and management of the Gallatin National Forest and surrounding lands.

#### **Yellowstone National Park:**

In 1872, Congress formally “reserved” 2 million acres in Montana and Wyoming “from settlement, occupancy or sale” and dedicated it as our first national park – Yellowstone.

#### **The Reservation Period – The Forest Reserves**

A major shift in national public policy began in the late 1800's. The end of the Disposal Era, and the birth of the National Forest System took place with passage of the Forest Reserve Act of 1891. The first Forest Reserve was established in 1891 in Wyoming as the “Yellowstone Park Timberland Reserve”. That first reserve is the present-day Shoshone National Forest.

The “Gallatin Forest Reserves” were established in 1899 by Presidential Proclamation. In 1902, public domain lands in the Hebgen Basin were reserved as the Madison Forest Reserve, and lands in the Absaroka Range and near Cooke City were set aside as the Absaroka Reserve. In 1904 and 1907, public lands were proclaimed as the Yellowstone Forest Reserves. The Big Belt Forest Reserve (1905) included lands in the Bridgers and Big Belt Mountains. The Crazy Mountains Forest Reserve was proclaimed in 1906.

In 1905, under the Transfer Act, management of the Forest Reserves was transferred from Interior to Agriculture. The Forest Reserves became the National Forest System and the Forest Service was created under the leadership of Chief Gifford Pinchot.

In 1912, the Crazy Mountains and Yellowstone National Forests became the Absaroka National Forest. In 1931, the Madison NF lands near West Yellowstone were added to the Gallatin NF. In 1945, the Absaroka NF was abolished and those lands were merged into the Gallatin NF.

In 1926, Congress passed legislation to authorize the President to expand the northern boundary of Yellowstone National Park in Montana, adding a tract of land in Reese Creek to the Park. This same law (“1926 Act”) added lands to the Absaroka and Gallatin National Forests, and authorized and encouraged the federal agencies to acquire, by purchase and exchange, additional private lands north of the Park for wildlife purposes.

**When the Forest Reserves and National Forests were established in the early 1900’s, substantial amounts of lands within these proclaimed boundaries had already been patented and conveyed to state and private ownership, mainly through grants to states, homestead acts, mining laws and railroad grants.**

Since 1945, Congress has approved several small changes to the proclaimed boundary of the Gallatin NF. Most recently (in the Gallatin Land Consolidation Act of 1998) the Wineglass area and northern end of the Bridger Mountains were excluded from the current Forest boundary.

When the (2.1 million-gross acre) Gallatin National Forest was established in 1945, well over 400,000 acres of intermingled private lands existed within the boundary. Except in the southeastern portion of the Forest (Absarsoka-Beartooth Wilderness) and the Hebgen Lake basin, checkerboard ownership occurred across most of the Forest, including the Bridgers, Crazy, Gallatin and Madison Ranges (including present-day Big Sky).

*Note: SO Lands maintains valuable historic records and maps that document the establishment of the Yellowstone, Crazy, Madison, Absaroka, Big Belt and Gallatin National Forests, and the modifications that led to the 1945 Gallatin National Forest. These documents include public laws, Executive Orders, Presidential Proclamations, and Withdrawals. A framed map in Lands shows the 1945 Gallatin NF boundary and ownership.)*

## Chapter II

### **The Landownership Adjustment Program On the Gallatin National Forest**

This chapter describes, on a fairly broad scale, the program of Landownership Adjustments (Land Purchases, Land Donations, Land Exchanges and Conservation Easements) completed on the Gallatin National Forest in the past 100 years (1905-2005). Emphasis is given to those land adjustments completed after the 1987 Forest Plan.

The Gallatin National Forest, part of the Greater Yellowstone Ecosystem, is widely recognized for its remarkable wildlife, ecological, recreation and scenic values. The Gallatin contains critical habitat for the grizzly bear, gray wolf, and for migratory and resident elk, moose, bighorn sheep, pronghorn and mule deer. The Forest contains headwater streams feeding the Yellowstone, Madison and Gallatin River, and offers an historic and scenic setting for recreation, including hunting, fishing, dude ranching, hiking and horseback riding. Nearly 80% of the Gallatin is within designated Wilderness and “roadless” land areas, and the other 20% is within “roaded” land areas.

When the present-day Gallatin National Forest boundary was established in 1945, approximately 1.7 million acres of National Forest System (NFS) lands were intermingled with over 400,000 acres of private, state and city lands. Most of the non-federal lands were in a “checkerboard” ownership configuration due to the railroad grants and state school grants. Considerable additional acreage of private land, mostly in smaller acreage parcels, resulted from the early homesteading laws and mining patents.

During the past several decades, most of these private lands, including all the former railroad grant lands, have been sold to other owners or transferred to heirs and successors. In today’s real estate market, nearly all of the private land inholdings within the Gallatin NF are considered valuable (and vulnerable) to permanent residential and recreational development. Many of the properties have legal road access. The market value of these private lands, and the development pressures, continue to grow substantially over time.

**The Forest Service, Montana Fish Wildlife and Parks, conservation and recreation groups, and local communities all clearly recognize that acquiring and/or conserving these private lands is crucial to protect the ecological integrity, natural resource values and traditional public uses of the Gallatin National Forest.**

#### **POLICY AND OBJECTIVES**

Longstanding Forest Service policy for the Landownership Adjustment Program is to acquire and consolidate key tracts of private land to protect and enhance wildlife and fish habitat,

wilderness, recreational opportunities, wetlands and riparian areas, and to improve legal access and long term management effectiveness.

These goals and objectives are reflected in the Forest Plan (1987) for the Gallatin National Forest. Under current national policy, the Forest Service can acquire and hold conservation easements as an additional tool to achieve its land management goals.

## **LAND ADJUSTMENT METHODS**

The primary methods that are used by the Forest Service and our cooperators to acquire and conserve private lands within and adjoining the Gallatin National Forest are:

- **Land exchange** (land-for-land, and land-for-timber)
- **Land purchase** (land for cash)
- **Land donation** (voluntary donation by landowner)
- **Conservation easements** (acquire development rights on private land).

Following is a description of how each of these methods has been applied on the Gallatin National Forest, particularly since the Forest Plan was adopted in 1987, to acquire and conserve critical private lands, to improve access and improve management effectiveness.

### **Land Purchases**

Direct purchase of private land inholdings, from willing landowners at appraised value, has been a very important tool for the Gallatin National Forest. For the past twenty years, the Gallatin NF has had the largest sustained land purchase program in the Northern Region, and perhaps in the entire National Forest System.

Most purchases are designed to protect critical wildlife and fisheries habitat and wetlands, and to improve access for recreational opportunities. Acquisition of wilderness inholdings has also been a small but important part of the purchase program.

The Forest Plan establishes these general priorities for acquisition of private lands from willing sellers to meet landownership objectives:

- a. Private lands within designated wilderness.
- b. Key wildlife habitat tracts (threatened and endangered species and other)
- c. Tracts that improve National Forest access, resolve administrative concerns and/or reduce administrative costs.
- d. Tracts in major recreation composites.
- e. Other key recreation tracts.
- f. Other.

Land purchases on this Forest have been very high profile and effective, in part due to the emphasis that Forest leaders place on land conservation, and in part due to the deeply-rooted and

broad-based public support for public lands from our communities, counties, the State and national organizations. Most elected officials, and most agencies, conservation groups and recreation user groups, have actively supported this Forest's land acquisition program.

The primary funding source for the purchase program has been the federal Land and Water Conservation Fund (LWCF), established by Congress in 1965 as a funding source to conserve private lands for wildlife and recreation purposes. LWCF funding is appropriated each fiscal year by the Congress to four federal agencies and to states.

Annually, this Forest nominates proposed projects for LWCF funding. Each year, many worthy projects nationwide compete for very limited appropriated LWCF funds. On the Gallatin, the nationally-significant public values, combined with strong support from conservation partners and the MT delegation, has been critical to secure needed funding. Other funding sources, including contributions and donations from state and partner organizations, have also been vital to the overall success of the acquisition program.

Following is a general overview of the past land purchases on the Gallatin NF. **Enclosure #1** provides a listing of all the completed purchases on the Forest since the LWCF program began.

**1967-1979:** Between 1967 and 1979, the Gallatin NF completed 13 LWCF purchases. These purchases total about 9,839 acres and were acquired for about \$2.5 million in total. The first purchase was the Blankenship property near Jardine (219 acres for \$6,750, or about \$31 per acre). Two relatively large purchases were completed in this early era:

- In 1975, the Nature Conservancy (TNC) helped the Forest Service purchase seven checkerboard sections (4,574 acres) on the east side of the Crazy Mountains. The land was purchased for \$300,000 from "Venture Limited" of Colorado. Most of these lands are located near Sweet Grass Canyon.
- In 1977, TNC again helped the Forest Service purchase 3,677 acres from Jim Goodrich in the Eldridge Creek area of the Taylor Fork drainage for \$950,000.

The remaining eleven purchases were each relatively small, ranging in size from less than one acre to 481 acres. Two purchases were made in Hyalite Canyon (Maxey), and several were made along the Gallatin River (Rainbow Bridge and Durnam Meadows.)

**1980-1988:** During this eight-year period, **no land purchases were completed** on the Forest. The main reason for this eight-year "moratorium" was that President Reagan did not support federal land acquisition and Congress approved only minimal LWCF funding.\*

*\* In 1980, the Forest Service had an opportunity to purchase the 12,000-acre Forbes Ranch near Gardiner. The Forest Service secured an option to buy the entire ranch at the \$6.5 million appraised value. However, the Forest Service was not able to obtain LWCF funding for the purchase. Forbes then sold the ranch to the Church Universal & Triumphant, and that land became the Royal Teton Ranch.*

**Northern Yellowstone Elk Herd Project (1988-1993):**

The “Yellowstone fires” occurred in 1988. During the next five years, the Forest Service joined in partnership with the Rocky Mountain Elk Foundation, National Park Service and MT Fish, Wildlife and Parks to complete the “Northern Yellowstone Elk Herd Project”. Over 8,700 acres of elk habitat north of Yellowstone Park on the Gardiner District were acquired in fee or conserved by easement. The total purchase was nearly \$10 million, and funding came from federal, state and private sources. Eleven separate land transactions were completed, including the historic “OTO Ranch”, and the State’s Dome Mountain Wildlife Management Area.

In some respects, this project represents the first and most significant, large-scale land conservation effort on this Forest. No prior purchase had been done at such a large scale, or with such a high level of public interest and political support. And for the first time, a federal/state/private partnership was formed to achieve land conservation on the Forest.

Since that initial land partnership effort, the Gallatin's land purchase program has continued to be very effective in acquiring and conserving critical lands, and improving landownership to enhance long-term management effectiveness. Since 1987, the Forest Service and its partners have purchased **nearly 70,000 acres** of private inholdings within and adjoining the Gallatin NF, for a total purchase price of nearly \$60 million.

After the Northern Yellowstone project (1993-2005), several large and significant land purchases were completed on the Gallatin NF. The primary purchases are described below. .

**Louise Galt (71 Ranch) – North Crazy Mountains (1991-93):**

Between 1991 and 1993, the Forest Service purchased most of the checkerboard lands owned by the 71 Ranch (Louise Rankin Galt) in the northern Crazy Mountains, including the Shields River drainage, within the Gallatin and Lewis & Clark National Forests. This large purchase was made to consolidate land ownership, improve recreation and administrative access, and place wildlife habitat, timber, range, watershed and scenery values in public ownership.

Lewis & Clark N.F.	19,026 acres	\$3.3 million
<u>Gallatin N.F.</u>	<u>19,888 acres</u>	<u>\$3.7 million</u>
TOTALS	38,914 acres	\$7.0 million

**South Cottonwood Purchase: (1992)**

When Plum Creek Timber Company (PCTC) proposed to build roads and harvest timber on its checkerboard lands in the South Cottonwood area (Fox Creek), public opposition was strong. Eventually, this led to an agreement wherein the Forest Service purchased four PCTC sections (2,500 Acres) near the middle of the South Cottonwood drainage.

**City of Bozeman - Peet’s Hill Project: (1993)**

In a community effort to acquire the “Peet’s Hill” property for a park, the City of Bozeman and Gallatin Valley Land Trust reached an agreement in which the Forest Service purchased some City lands. Congress appropriated funding, and the Forest Service acquired 950 acres in upper Bozeman Creek, in the Wilderness Study Area.



**Porcupine/South Cottonwood: (1994-96)**

In 1992, Plum Creek Timber Company sold its lands within the Gallatin NF (about 130,000 acres) to Big Sky Lumber Co. (“BSL”). Negotiations between BSL, the Forest Service, conservation groups and the Congressional delegation led to an agreement in which BSL offered to sell and exchange nearly 101,000 acres of its lands under specific terms and timeframes that required Congressional legislation.

In 1993, Congress passed the **Gallatin Range Consolidation and Protection Act**. This Act directed the Forest Service to acquire and consolidate the BSL lands in the Porcupine and South Cottonwood areas, and in other areas of the Forest. The relatively pristine lands in the Porcupine area were recognized as extremely significant for wildlife, particularly elk and grizzly bear, and highly vulnerable to development. Through a partnership with RMEF, and FWP, **8,100 acres** in Porcupine and South Cottonwood were purchased in 1994, 95 and 96, with a mix of funding from LWCF, Montana’s Habitat Acquisition Fund and RMEF funds.

**New World Mine (1996-98)**

In the mid-1990’s, Crown Butte Mines, Inc. (CBMI), of Canada, proposed a major new gold mine in the New World Mining District near Cooke City. As a result of litigation and public opposition, the Clinton Administration, acting through the Departments of Justice and Agriculture, entered into binding settlement agreements in 1996 and 1997 with CBMI, with Margaret Reeb, and with other involved parties.

These New World agreements led to the following primary actions in 1997-98:

- (a) The Forest Service purchased in fee all CBMI lands (approx. 693.909 acres);
- (b) The Forest Service acquired a Conservation Easement on Reeb-owned lands that had been leased to CBMI (approx. 931 acres). The CE permanently restricts future mining development on the Reeb lands unless explicitly directed by Congress in the future;
- (c) Forest Service restoration of the mining properties in the New World Mining District.

*NOTE: The Gallatin NF did not directly participate in these agreements or land acquisitions. Our records regarding these acquisitions are incomplete, complex and difficult to understand. The summary above is considered reasonably accurate.*

**Taylor Fork: (1998-99)**

The Forest Service and BSL owners developed a second legislative proposal to enable acquisition of another 55,000 acres of BSL lands in the Taylor Fork, Buck Ridge, Gallatin and Bridger/Bangtail Mountains. The “**Gallatin Land Consolidation Act of 1998**” directed the Forest Service to acquire these BSL lands through the "Gallatin II" land exchange and by direct purchase.

To acquire the BSL lands in the Taylor Fork, the partnership among the FS, RMEF and FWP was again critical. FWP acquired one BSL section by exchange and 160 acres by purchase. RMEF helped secure \$3.65 million in LWCF funds, and raise another \$500,000 in private

and matching contributions. Of the 11,000 total acres of BSL lands acquired in the Taylor Fork, **4,795 acres** were acquired by cash purchase.

**Royal Teton Ranch Land Conservation Project: (1998-2003)**

The 12,000 acre Royal Teton Ranch (RTR) is located just north of Yellowstone National Park. The Ranch lands provides critical wildlife migration and winter range habitat for a multitude of species, including mule deer, elk, bighorn sheep, antelope and bison. The lands also provide essential habitat for the grizzly bear and Yellowstone Cutthroat trout.

In 1997, the Forest Service and the RMEF developed an agreement with the landowner (Church Universal & Triumphant) that included purchase of Church-owned lands and a conservation easement, acquisition of the Church's geothermal interests, and a "right of first refusal" to potentially purchase all remaining RTR lands in the future. The RMEF and Forest Service purchased **6,274** acres of RTR lands in fee and purchased another **1,508** acres in conservation easement (RTR Devil's Slide CE). The LaDuke geothermal and the land exchange components of the RTR project have not been completed to date.

**320 Ranch – Taylor Fork Project: (2001-2003)**

Throughout the 1990's, the Forest Service and several conservation organizations made repeated efforts to acquire six key parcels of land in the Taylor Fork area owned by 320 Ranch (David Brask et.al). In 2001, with assistance from the Trust for Public Land (TPL), an agreement was reached between 320 Ranch, TPL and the Forest Service.

In total, **3,246 acres** of 320 Ranch lands were purchased in phases in 2002-03 for \$9.6 million. Several longstanding road and trail access issues were also resolved. In addition, TPL purchased another 100 acres of land from 320 Ranch in Section 17 of the Taylor Fork, and TPL donated those lands to the Gallatin NF in 2004. In 2005, TPL and the Forest Service purchased another key 80-acre inholding in the upper Taylor Fork (Carrie Ward property). Also, TPL holds a "right of first option" on the remaining 320 Ranch lands (40 acres) in Taylor Fork Section 1.

**Duck Creek Wetlands: 2004-2005**

The Duck Creek Wetlands property has extremely high wildlife values, with grizzly bears, elk and bison occupying or migrating through it. The land also has exceptional scenic and open space values. Given its close proximity to Yellowstone National Park, the property was considered extremely vulnerable to subdivision and development. It was zoned for 71 single-family homes. If full-scale development were to occur, critical wildlife habitat and an important scenic vista would be ruined. In 2004 and 2005, TPL and the Forest Service were able to purchase the Duck Creek property (413 acres) in a two-phased purchase.

These acquisitions have been very instrumental in conserving and securing:

- Habitat for numerous wildlife species, particularly elk and grizzly bear
- Riparian areas and wetlands
- Access for recreation opportunities
- Wilderness inholdings

**Enclosure #1** is a listing of all the land purchases completed to date on the Gallatin NF.

## Land Donations

The donation of private land (in fee title) to the United States for addition to the Gallatin National Forest, has been a relatively small but important part of the Forest's overall landownership adjustment program.

Some very critical parcels of land have been donated by private parties and conservation organizations in recent years, including land parcels near Hebgen Lake, the Spanish Peaks, Eightmile Creek, the Taylor Fork and Reynolds Pass.

Also, in recent years, private lands have been donated to the U.S. as one part of a land-for-land exchange to help reconcile differences in the appraised values. Examples include the Goat Creek, Red Creek Ranch and Eightmile land exchanges.

Since the 1987 Forest Plan, a total of six land donations have taken place on the Gallatin NF. These donations have enabled acquisition of approximately total **951 acres** of land. Two more land donations (Brackett Creek and Bennett Creek) are pending and will be completed in 2006.

**Enclosure #2** is a listing of all land (fee title) donations completed on the Gallatin NF since the 1987 Forest Plan.

## Conservation Easements

A conservation easement is a partial interest in real property. In granting a conservation easement, the landowner retains ownership of the property, but conveys certain development rights to another party, usually in perpetuity. The party that holds the easement (whether the Forest Service or a non-profit conservation organization) has a long-term responsibility to administer and monitor that easement, and to ensure compliance with its terms and conditions.

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

Conservation easements may be acquired by donation or by purchase. Often, donated easements involve a tax incentive, but not in some situations the landowners simply want to see their land protected from development in the future. Usually, easements are purchased are completed on the basis of an appraisal of the value of the development rights to be acquired.

Forest Service policy is to encourage the use of conservation easements as a tool to protect critical land inholdings within and adjoining the National Forests. Easements are especially

applicable in situations where the landowner is not willing to convey fee title (by purchase or land exchange), but the landowner is willing to place an easement on the property.

The Forest Service preference is for qualified (IRS 501-3C) local conservation organizations, such as Montana Land Reliance, RMEF and Gallatin Valley Land Trust, to hold and administer conservation easements, rather than the Forest Service holding the easements. These organizations have historically been better prepared and funded to administer and monitor easements on private lands. The Forest Service is generally not funded to administer easements and the agency not well prepared or organized to do so, except in a few areas of the U.S.

Private landowners within the boundary of the Gallatin National Forest have granted numerous conservation easements to various non-profit conservation organizations and the State of Montana. The Forest Service has played an active role in referring landowners to the appropriate conservation groups, and in supporting the grant of easements.

Good examples of such conservation easements:

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

More and more frequently, the Gallatin NF is effectively using conservation easements in developing potential land exchanges. Where concerns exist about protecting the NFS lands under consideration for exchange to private ownership, an agreement may be reached wherein the landowner voluntarily places an easement on the NFS land following the land exchange.

Following are some recent examples of easements that resulted from land exchanges:

- Little Donahue - Section 36 (BSL (RY Timber) to RMEF),
- Eightmile Creek - Section 6 (Wilson to MT Land Reliance)
- Spear Lazy U Ranch in the Crazyes (McLeod family to GVLT)
- Lone Mountain/Pioneer Mountain (BSL (Blixseth) to Bighorn Institute).

In addition, the Forest Service may acquire and hold title to conservation easements. Nationally, agency policy is shifting gradually over time to allow and encourage this situation. However, conservation easements are still recognized as less desirable to fee acquisitions, because of the long-term expenses and responsibilities of administering these easements on private lands, and because non-profit conservation groups are the more logical entity to hold the easements.

The Gallatin National Forest has acquired and continues to administer five (5) conservation easements to date, protecting almost **3,000 acres** of private lands. Four easements are located on Gardiner District, and one (Hyalite DNRC) is on Bozeman District. They are:

**1988** Frenchy's Meadow Conservation Easement  
-- 418 Acres -- Consideration: Donated

**1991** State of Montana – DNRC Hyalite Reservoir Conservation Easement  
-- 66 Acres -- Consideration: Donated

**1991** Strong Conservation Easement (Northern Yellowstone Elk Project, RMEF #7)  
-- 72.76 Acres -- Consideration: \$40,000

**1997** Margaret Reeb (New World Mine) Conservation Easement  
-- 931 Acres -- Consideration: Unknown

**1999** RTR, Devils Slide (RMEF) Conservation Easement  
-- 1,508 Acres -- Consideration: \$1,799,270

**Total:** 2,996 acres (rounded) in Conservation Easements are held by Forest Service.

*Note: Records for these conservation easements are retained in SO Lands (5440) and also at the Ranger Districts. Conservation Easements are not shown on Forest Service maps.*

## Land Exchanges

On the Gallatin NF, land exchange has been a widely-used and effective tool to consolidate NFS lands and improve land management effectiveness. A few large and significant land exchanges have been legislated by Congress. However, most land exchanges have been done through the normal administrative process. Very few land exchanges on this Forest have been appealed.

Under current regulations and policies, considerable time and expense is required to complete the land exchange process, including NEPA, public involvement land surveys, appraisals and title reviews. On average, a land exchange proposal may take 3 to 5 years to complete, and it may cost \$50,000 to 100,000 to complete the process. Typically, the costs are shared with the landowner. Given the time and expense, any land exchange proposal must be carefully evaluated early in the process to ensure that it is truly in the public interest and worth the investment.

Most exchanges completed on the Gallatin NF have been the conventional "land-for-land" exchanges, involving a balanced-value trade of federal land for non-federal land. However, the Gallatin NF has contributed timber harvest rights (bipartite) in one legislative exchange (Lost Creek Land Exchange, involving acquisition of RY Timber lands in Lost Creek on the Deerlodge NF). The Gallatin NF also recently completed a large-scale, land-for-timber receipts (tripartite) exchange with Big Sky Lumber Co. (BSL). That exchange was one component of the Gallatin Land Consolidation Act of 1998. Receipts were used to help acquire four BSL sections in the Taylor Fork area from 1999-2003. That exchange proved to be difficult and time-consuming.

Potential land exchanges are carefully designed to protect key resources and public values, to improve public access to NFS lands, and to protect existing road and trail access facilities. Sometimes a small land exchange (such as South Cottonwood - Bartosch) can greatly improve public access or resolve other management concerns.

### **Land Exchanges Completed Since 1987 Forest Plan**

Since the Forest Plan was adopted in 1987, eighteen land exchanges have been completed on the Gallatin NF, including three legislative land exchanges – Gallatin I, Gallatin II and Lost Creek. This equates to about one completed land exchange per year. In total, these 18 land exchanges have enabled public acquisition of approximately 97,300 acres of private land within the Gallatin NF, in exchange for approximately 31,200 acres of NFS land on the Gallatin NF. These figures exclude lands in the legislative exchanges on other National Forests and the BLM land.

Except for the three legislated exchanges, the remaining 15 land exchanges completed since 1987 have been relatively small, often involving less than 1,000 acres per project. In total, these smaller exchanges enabled public acquisition of nearly 4,100 total acres of private lands, in exchange for approximately 5,200 acres of NFS lands and some cash equalization.

Enclosure #4 contains a listing of all land exchanges completed on the Forest since 1987. *(Note: Although most of the individual case files still exist, there is no comprehensive list of the land exchanges that were completed prior to 1987 on this Forest.)*

### **Efforts to Consolidate the Checkerboard Railroad Lands**

From the 1920's through the 1980's, the Forest Service and the railroad companies (NPRC, BN and PCTC) pursued several large-scale land exchanges in an effort to consolidate public and private lands on the Gallatin and Beaverhead National Forests and in Yellowstone National Park.

In the 1950's and 60's, the Forest Service and NPRC developed a comprehensive land-for-land exchange on the Gallatin NF and in the Park. That proposal involved virtually ALL of NPRC's checkerboard lands. NPRC sought to consolidate its lands in the Gallatin Roaded, Bangtails, West Fork Gallatin (Big Sky) and Wineglass areas, and NPRC proposed to trade its lands to the Forest Service in the Bridgers, Madison, Taylor Fork, Buck Ridge, Porcupine, Gallatin Crest and inside YNP. Despite repeated efforts, that very large consolidation was not completed.

#### **NP - Gallatin #1**

In 1967, the Forest Service and NPRC did complete what was termed a "milestone" land exchange, enabling public acquisition of checkerboard NPRC lands located inside and near the Park. NPRC conveyed 9,552 acres of land to the U.S., and the U.S. conveyed 4,747 acres of NFS land to NPRC. The private lands added to YNP and to this Forest are located in the headwaters of Buffalo Horn and Daly Creek, and in Cinnabar and Tom Miner Basin. The federal lands conveyed to NPRC are located south of Big Sky near Ousel Falls (T7S, R3E and T7S, R4E). Most of those lands are now developed for residential and commercial purposes.

#### **Lee Metcalf Wilderness and Management Act (1983 - PL 98-140)**

Within this significant wilderness legislation, Congress directed the completion of a land-for-land exchange between the Forest Service (Gallatin NF and Beaverhead NF) and Burlington Northern Railroad Company in the Madison Range. In that exchange, BNRC conveyed 24,007 acres to the U.S. within and near the newly-established Wilderness, in the Cedar Creek, Bear

Creek and Indian Creek drainages on the Beaverhead NF and in the Muddy Creek- Buck Ridge area on the Gallatin NF. In exchange, the U.S. conveyed 11,810 acres of checkerboard NFS lands in Jack Creek to BNRC. Following that exchange, BNRC and PCTC harvested much of the timber in the Jack Creek area. In the early 1990's, PCTC sold its block of Jack Creek lands.

In the 1970s and early 1980's, BNRC and PCTC developed legislative land exchange proposals, mainly involving lands in the Gallatin and Bridger Ranges. But those exchange proposals were linked by the MT Congressional delegation to Montana Wilderness bills, none of which were signed into law. (One such bill passed Congress but was vetoed.)

Following those unsuccessful efforts, starting in the late 1980s and continuing into the early 1990's, PCTC began to sell its remaining checkerboard lands on the Gallatin and Beaverhead Forests. When PCTC decided to sell out, the Nature Conservancy, Brand-S Lumber Co. and others attempted to acquire those lands, but those efforts were not successful.

In 1992, PCTC sold its remaining lands (roughly 130,000 acres) on the Gallatin NF to a group of investors named Big Sky Lumber Co. (BSL – Tim Blixseth, Mel McDougal et al). Through the collective efforts of the Forest Service, RMEF, FWP, other conservation and sportsman organizations, and the MT Congressional delegation, agreements were reached between the Forest Service and BSL that led to the consolidation of most of the BSL checkerboard lands.

In 1993 and in 1998, with strong support from communities, conservation and user organizations, and state and federal agencies, the MT Congressional delegation sponsored stand-alone legislation (not tied to Wilderness bills), that enabled the Forest Service to acquire about 101,000 acres of BSL lands through two large purchases (Porcupine and Taylor Fork) and two large exchanges. Those exchanges are often referred to as “Gallatin I” and “Gallatin II”.

The 1993 and 1998 exchanges and purchases consolidated into public ownership the former BSL checkerboard lands in the Gallatin Range WSA, east side Paradise Valley, main Bridgers, Gallatin Roaded, Taylor Fork - Buck Ridge, and east half Bangtails. BSL acquired and consolidated its lands in the Wineglass, Battle Ridge, west half Bangtails, and Pioneer Mountain. BSL retained its block of lands south of Big Sky, and three other BSL sections (Section 5 in Little Bear, Section 31 in Moose Creek and Section 25 near Fairy Lake).

**Gallatin Range Consolidation and Protection Act of 1993:** (“Gallatin I”, P.L. 103-91)

The 1993 Act directed the Forest Service to acquire 37,752 acres of BSL lands, most located within HPBH Wilderness Study Area, but also the BSL lands on east side of the Paradise Valley, one parcel near Bridger Bowl and one parcel in the Scapegoat Wilderness on the Lolo NF.

The Forest Service exchanged 18,177 acres of NFS lands to BSL as follows:

- \* 5,763 acres on the Gallatin NF (North Bridgers, plus 3 sections in the Bangtails and one section in the South Fork of the West Fork Gallatin, South of Big Sky)

- \* 12,414 acres on the Flathead and Lolo National Forests

**Gallatin Land Consolidation Act of 1998:** (“Gallatin II”, PL 105-267)

This Act directed the Forest Service to acquire 55,100 acres of BSL lands in the following areas:

- Gallatin Roded
- Taylor Fork and Buck Ridge
- Bridger Mountains
- east half of Bangtail Mountains
- Tobacco Root Mountains (one section)

The Forest Service and BLM exchanged 30,843 acres of federal lands to BSL as follows:

- 20,276 acres of Gallatin NF land in the Pioneer Mountain, Wineglass, Battle Ridge, west ½ Bangtails, Doe Creek, Little Bear and Little Donahue areas.
- 8,467 acres on the Flathead, Lolo, Deerlodge and Helena National Forests
- 2,100 acres of BLM lands in Madison and Broadwater Counties

To balance the overall values of the exchange, the Forest Service also exchanged NFS timber receipts and other funds totaling \$4.15 million, over a period of five years (1999-2003).

The 1998 Act also authorized and directed completion of two other small exchanges - Eightmile/West Pine (Wilson) and Wapiti in the Taylor Fork (Kelseys).



## Chapter III

### Ongoing and Reasonably Foreseeable Landownership Adjustments On the Gallatin National Forest

**Chapter III** briefly describes the ongoing, and reasonably foreseeable, land adjustment activities on the Gallatin NF. It identifies the geographic areas that will likely be the focus for future land adjustments on this Forest.

#### Current Activities: (2006-2007)

At the present time, the Gallatin National Forest is working to complete the following three land adjustment projects in 2006 and 2007:

1. **Bennett Creek Land Exchange, Land Donation and Cabin Replacement:** This project is located in the upper Shields River drainage, on west side of Crazy Mountains, and should be completed in 2006.
2. **Brackett Creek Land Exchange, Land Donation and Road Replacement:** This project is located in the Bridger Mountains, in the Brackett Creek and Cache Creek drainages. It also should be completed in 2006.
3. **Bozeman Pass Land Conservation Project.** This project is located near Chestnut Mountain along both sides of Interstate 90, on the Bozeman District. This project is being completed in a partnership with the Trust for Public Land (TPL), Gallatin County, Gallatin Valley Land Trust and other parties.

In this project, the Forest Service proposes to purchase one section (Section 29), acquire approximately 200 acres north of I-90 by donation, including the rock climbing area, and acquire by donation a trail easement and an administrative road easement to improve access to NFS lands on Chestnut Mountain. Also, the landowner (H. Schmidt) will grant a conservation easement on his remaining private lands extending north of the interstate. The easement will be purchased by Gallatin County (Open Space Land Bond) and administered by GVLT.

Phase I of the Bozeman Pass purchase should occur in 2006 and Phase II should occur in 2007, contingent on receiving LWCF funding in FY07.

**Reasonably Foreseeable Activities:**  
**(2007-2026)**

In the next twenty years (2007-2026), it is reasonable to anticipate that the following will occur:

**Land Exchanges:**

The Gallatin NF will continue to use land exchanges as a tool to simplify land ownership configurations, to improve long-term management effectiveness, and to address specific management concerns and opportunities. It is anticipated that, on average, one land exchange will be completed per year in the next twenty years. Funding and staffing to complete land adjustments is currently on the decline. Therefore, the Forest Service will need to be even more judicious in selecting from the many land exchanges that will be proposed in the next 20 years, and pursuing only those proposals that truly result in a substantial gain in public values.

Currently, several out-year land exchange proposals are in early stages of consideration. These include:

- Two exchanges in the Crazy Mountains (one west side and one east side),
- An exchange and purchase in the Pole Gulch area of the Gallatin Range, and
- A small exchange near Jardine involving acquisition of a private wilderness inholding.

Other potential land exchanges and/or purchases are being discussed with landowners, but no specific agreement has been reached with the Forest Service.

The proposed RTR Land Exchange, developed in 1999 with the RMEF and Church Universal, and involving approximately 1,000 acres of NFS land, has been tabled indefinitely.

At this time, no large-scale, legislative land exchanges are being considered on this Forest. In the next 20 years, it is anticipated that land exchanges on this Forest will generally be small in size, involving a few sections of land or less, and that only a few, if any, will be legislated.

**Land Purchases:**

The Gallatin NF will continue to use land purchases to acquire critical private lands that contain wildlife habitat, recreation opportunities, wetlands and wilderness inholdings, and that improve long-term management effectiveness. It is anticipated that, on average, one or less land purchase will be completed each year in the next twenty years.

Appropriated LWCF funding to complete land purchases is currently on the decline. Therefore, as in land exchanges, the Forest Service will need to be very judicious in selecting from the many potential land purchases that will be proposed in the next 20 years, and pursuing those proposals that result in a substantial public benefit and have strong public support.

Currently, a few out-year land purchase proposals are under consideration. These include:

- An exchange and purchase in the Pole Gulch area of the Gallatin Range,

- A potential purchase near Cooke City, both on the Gallatin and Custer NF.

Other potential land or purchases are being discussed with landowners and conservation partners, but no specific agreement has been reached with the Forest Service.

At this time, no large-scale land purchases are being considered on this Forest. In the next 20 years, it is anticipated that land purchases on this Forest will generally be smaller in size, particularly in comparison to the 1990s, involving a few sections of land or less.

RMEF holds a Right of First Refusal to acquire the remaining RTR lands west of the Yellowstone River near Yellowstone National Park, in the event the Church elects to sell those lands, in whole or in part. However, in the near future, that is not likely to occur.

### **Land Donations:**

Land donations are sporadic and opportunistic in nature, and difficult to anticipate in the future. After the Bozeman Pass donation, no other specific land donations can be identified at this time.

However, as discussed earlier, land donations frequently occur in conjunction with consideration of land exchange proposals, and that is anticipated to continue in the future on this Forest.

Since the 1987 Forest Plan, a total of six land donations have taken place on the Gallatin NF. These donations have enabled acquisition of approximately total 951 acres of land. It is anticipated that a similar number of donations will occur in the next 20 years.

### **Conservation Easements:**

It is anticipated that acquisition of conservation easements on private lands will continue and perhaps increase somewhat in the next 20 years on this Forest. Since 1987, six conservation easements were acquired by the Gallatin National Forest, including the easement in the New World Mining District. A similar number of easements should be expected in the next 20 years. Some will be purchased and some will be donated to the U.S.

### **Geographic Areas of Emphasis:**

After completion of the Gallatin land consolidation in the 1990's, the primary remaining geographic areas of substantial intermingled ownership are in the Crazy Mountains, east side Gallatin Range, north Bridgers, north side of Spanish Peaks, the Cinnabar Basin, Tom Miner and Mol Heron areas, and near Cooke City and Hebgen Lake.

It is anticipated that the primary emphasis for this Forest's land adjustment program for the next 20 years will be within these geographic areas. In addition, acquisition of A-B Wilderness inholdings will remain a priority for this Forest in the future. However, the Forest Service will continue to respond to good opportunities to make beneficial land purchases, donations and other land adjustments, wherever those opportunities may arise in the future.

**ENCLOSURE #1**

**LAND PURCHASES COMPLETED  
ON THE GALLATIN NATIONAL FOREST**

1967 JARDINE (Blankenship)  
219.00 Acres, \$6,570 Consideration

1968 BOULDER RIVER (Holman)  
5.76 Acres, \$2,000 Consideration

HOLMAN & SON RANCH (Boulder River)  
1.63 Acres, \$650 Consideration

1970 HYALITE #2 (Maxey)  
370.008 Acres, \$ 5,470 Consideration

1971 HYALITE #3 (Maxey)  
176.50 Acres, \$44,831 Consideration

1975 NATURE CONSERVANCY (Venture Limited – Crazy Mountains)  
4,573.84 Acres, \$300,000 Consideration

1977 NATURE CONSERVANCY (Jim Goodrich – Taylor Fork)  
3,677.00 Acres, \$950,000 Consideration

FRED PACK (Rainbow Bridge – Gallatin Canyon)  
91.00 Acres, \$258,580 Consideration

ISABELLE V. DURNAM #1 (Durnam Meadows – Gallatin Canyon)  
31.14 Acres, \$87,192 Consideration

1978 ISABELLE V. DURNAM #2 (Durnam Meadows – Gallatin Canyon)  
90.90 Acres, \$254,520 Consideration

JOSEPH MARKLEY  
120.65 Acres, \$346,866 Consideration

EDWARD C. PAPESH  
481.25 Acres, \$108,400 Consideration

1979 ISABELLE V. DURNAM #3 (Durnam Meadows – Gallatin Canyon)  
0.63 Acres, \$2,709 Consideration

**Subtotals: 1967-1979: 9,839 Acres, \$2,447,000 Consideration**

**LAND PURCHASES** (continued)

**1979-1988** No Land Purchases were completed.

1989 Nelson Ranch (Northern Yellowstone Elk Herd Project, RMEF #1)  
-- Acres: 1,111.42. Consideration: \$784,000

1990 OTO Ranch I (NYEH Project, RMEF #2)  
-- Acres: 2,217.20. Consideration: \$2,679,996

OTO Ranch II (NYEH Project, RMEF #3)  
-- Acres: 1,048.217. Consideration: \$1,370,004

1991 Strong Property (NYEH Project, RMEF #4)  
-- Acres: 190.06. Consideration: \$325,000

Hayes Property (NYEH Project, RMEF #5)  
-- Acres: 195.45. Consideration: \$609,500

McPherson Property (NYEH Project, RMEF #6)  
-- Acres: 99.5. Consideration: \$373,500

Shields Tract B (OTO Ranch III) (NYEH Project – RMEF #8)  
-- Acres: 51.757. Consideration: \$125,000

Galt Phase I (all lands on Gallatin NF)  
-- Acres: 3,560.32. Consideration: \$503,114.88

1992 Galt Phase II Land Purchase  
-- Acres: 16,080.21 (6,605.88 on Gallatin NF; 9,474.33 on L&C NF)  
-- Consideration: \$2,950,114.  
(\$1,312,241. for Gallatin and \$1,637,873. for L&C)

South Cottonwood (Plum Creek Timber Company)  
-- Acres: 2,496.64. Consideration: \$1,200,000

Meridian Minerals ((NYEH Project - RMEF #9)  
- Acres: 673.35. Consideration: \$944,000

1993 Galt Phase III (all lands on Gallatin NF)  
-- Acres: 4,743.25. Consideration: \$1,009,910.94

**LAND PURCHASES** (Continued)

- 1993 Galt Phase IV  
-- Acres: 14,530.92 (4,978.82 on Gallatin NF; and 9,552.10 on L&C NF)  
-- Consideration: \$2,563,012 (\$878,180 for Gallatin; \$1,684,831 for L&C)
- 1993 Crystal Cross (NYEH Project - RMEF #10)  
-- Acres: 891.632. Consideration: \$713,000
- Crystal Cross (NYEH Project - RMEF #11)  
-- Acres: 63.905. Consideration: \$89,500
- City of Bozeman (Peet's Hill Project)  
-- Acres: 954.72. Consideration: \$167,000
- 1995 Porcupine, Phase I (Gallatin I - RMEF)  
-- Acres: 3,941.56. Consideration: \$8,594,781  
Porcupine Phase III (Gallatin I - RMEF)  
-- Acres: 1,949.11. Consideration: \$2,322,528
- 1996 Porcupine Phase II (Gallatin I - RMEF)  
-- Acres: 1,280.00. Consideration: \$3,754,913
- 1998 New World Mine (CBMI and Reeb)  
--693.909 Acres in Fee, and 931 Acres in Conservation Easement  
Consideration: \$65,000,000 total (no breakdown is available)
- 1998 Royal Teton Ranch (RTR) - North Dry Creek Section 17  
-- Acres: 640.00. Consideration: \$800,000
- 1999 RTR, Bassett Creek AB Wilderness Inholding (RMEF)  
-- Acres: 150.51. Consideration: \$600,000
- Taylor Fork (Gallatin II - RMEF)  
-- Acres: 4,795.08. Consideration: \$4,150,000
- RTR, Phase I (RMEF)  
-- Acres: 2,106.44. Consideration: \$5,095,200  
RTR, Phase II (RMEF)  
-- Acres: 2,467.87. Consideration: \$4,753,260
- 2000 Kopland (Town of Evendale Lots) (RTR inholdings)  
-- Acres: 0.286. Consideration: \$30,000
- 2002 320 Ranch – Taylor Fork Phase I (TPL)  
-- Acres: 1,268.28. Consideration: \$2,980,000

**LAND PURCHASES** (Continued)

**2003** 320 Ranch – Taylor Fork Phase II (TPL)  
-- Acres: 1,978.06. Consideration: \$6,445,000

Rigler – Yellowstone River (RMEF)  
-- Acres: 3.34. Consideration: \$110,000.

**2004** Duck Creek Wetlands Phase I (TPL)  
-- Acres: 345.95. Consideration: \$1,975,421

**2005** Squire (Gardiner)  
-- Acres: 3.7337. Consideration: \$15,000

Duck Creek Phase II (TPL)  
-- Acres Acquired: 68.58. Consideration: \$284,579

Taylor Fork/Ward (TPL) Land Purchase  
-- Acres Acquired: 80.00. Consideration: \$600,000

**Subtotals: 1989-2005: 69,987 Acres, \$58,918,000 Consideration (rounded)**

**All Completed Purchases: 79,826 Acres, \$61,365,000 Consideration (rounded)**

***(NOTE: The totals above exclude the New World Mine land and Conservation Easement purchases, which involved \$65 million.)***

**ENCLOSURE #2**

**LAND DONATIONS COMPLETED  
ON THE GALLATIN NATIONAL FOREST  
SINCE 1987 FOREST PLAN**

- 1992 Wayne Edsall – Hyalite Reservoir – Land Donation  
-- 0.572 Acres
- 1998 Red Creek Ranch Land Donation  
-- 22.843 Acres
- 2000 Eightmile Land Donation  
-- 290.00 Acres
- 2001 Goat Creek - Spear Lazy U Land Donation (Crazy Mountains)  
-- 227.5 Acres
- 2003 TM Land Partners -- Big Sky Land Donation  
-- 166.60 Acres
- 2004 Taylor Fork Section 17 Lots (TPL) Land Donation  
-- 100.94 Acres
- 2005 Raynolds Pass (The Nature Conservancy) Land Donation  
--143.002 Acres
- Total: 951.4 Acres, rounded



**ENCLOSURE #3**

**Gallatin National Forest  
Land Exchanges Completed  
1987 - 2005**

(Including Land-for-Land, Land-for-Timber and Land-for-Receipts)

<u>Year</u>	<u>Project Name/Location</u>	<u>Acres to US</u>	<u>Acres to Private</u> (And Other Federal Assets)
1987	Langworthy (Boulder River)	17	3
1988	Six Mile Creek LEX (Oates/Peckinpah - TPL) * US acquired lands in Six Mile Creek in Paradise Valley ** US exchanged NFS lands on Wineglass and Lone Mountain	504*	1,586** + \$8,750 Cash
1991	Jardine Joint Venture	98	116
1991	Verna Lou Landis (Bridgers – Middle Fork Flathead)	160	160
1992	Richard Morgan (Bridgers – Zade Mountain area)	612	648
1993	South Cottonwood (M. Bartosch)	23	23
1993	“Gallatin I” – BSL (Gallatin Consolidation and Protection Act of 1993) * US acquired 37, 752 acres BSL lands in HPBH WSA, East side of Paradise Valley, near Bridger Bowl, + 1 section in Scapegoat Wilderness ** US exchanged 5,763 acres on Gallatin (North Bridgers, Bangtails and 2 <sup>nd</sup> Yellowmule; and 12,414 acres on Flathead NF and Lolo NF	37,752*	18,167**
1996	Lost Creek Land Exchange (Omnibus Lands Bill – 1996) Legislative Exchange: (Deerlodge NF, Gallatin NF and RY Timber, Inc.) * US exchanged RY Timber lands on Beaverhead-Deerlodge NF ** US conveyed 7,185 acres of NFS lands on B-D NF (none on GNF). *** US exchanged 6.2 MMBF timber harvest rights on B-DNF, And 4.0 MMBF timber harvest rights in Pole Gulch area of Gallatin NF	17,460*	7,185** and 10.2 million BF***
1996	Troy Creek (North Bridgers - Gerald Wing)	254	400

<u>Year</u>	<u>Project Name/Location</u>	<u>Acres to US</u>	<u>Acres to Private</u> (And Other Federal Assets)
1997	<b>Bear Canyon</b> (Ray Alt)	10	10
1998	<b>Red Creek Ranch</b> (North side Hegben Lake)	26	10
1999	<b>“Gallatin II” – BSL</b> <u>(Gallatin Land Consolidation Act of 1998)</u>	<b>54,147*</b>	<b>30,843**</b>
		* US acquired BSL land in Gallatin Roaded, Bridgers, Taylor Fork, Buck Ridge, east ½ Bangtails, and Tobacco Roots. ** US exchanged 20,276 acres in Pioneer Mountain, Wineglass, Battle Ridge, west ½ Bangtails, Doe Creek Little Donahue areas, and 10,567 acres on Flathead, Lolo, B-D, Helena and BLM land.	
1999	<b>Goat Creek</b> (Spear Lazy U Ranch)	1,304	1,299* (*includes one BLM parcel)
2000	<b>Rigler</b>	48.5	30
2001	<b>BSL - Taylor Fork Section 33</b> <u>(Gallatin Land Consolidation Act of 1998)</u>	640	NFS Timber Receipts
2002	<b>Eightmile Creek</b> (Ken Wilson)	640	643.62
2002	<b>Wapiti</b> (Kelseys- Nine Quarter Circle Ranch)	320	240.97
2003	<b>Chico (Brandis)</b>	29.066	28.1 acres + \$12,000 cash
2003	<b>BSL - Taylor Fork Section 5</b> <u>(Gallatin Land Consolidation Act of 1998)</u>	639	NFS Timber Receipts
2004	<b>Alberton Gorge</b> (Multi-Forest LEX with Mt Power Co. and State FWP)	40*	2.2**
		* On Gallatin NF, US acquired State FWP land at Natural Bridge ** On Gallatin, US exchanged MPC cabins tract at Hebgen Lake	
2005	<b>BSL Taylor Fork Sections 3 &amp; 9</b> <u>(Gallatin Land Consolidation Act of 1998)</u>	1,282.6	NFS Timber Receipts + Other NFS Funds
<b>TOTALS</b>	<b>18 Land Exchanges</b>	<b>97,300 acres</b>	<b>31,200 acres</b> <i>(Total Acres are rounded and Exclude other Forests and BLM)</i>

**Robert Dennee Declaration**  
**Appendix C**  
**11/16/07**

## **Travel Management Restrictions Are Subject to Valid Rights of Access**

Gallatin National Forest – Briefing Paper  
Finalized June 13, 2006

**The travel management decisions and restrictions adopted by the Forest Service for the Gallatin National Forest are subject to valid rights and privileges to use “public roads”, and also to use certain National Forest System (NFS) roads and trails for which public vehicle travel may be restricted under the travel management process.**

The primary authority for closing or restricting the public use of any NFS roads and trails is 36 Code of Federal Regulations (CFR), Subpart B, 261.50, Orders.

### **Forest Service Authorizations**

Forest Service authorities to **grant** access rights across NFS lands, and NFS roads and trails, stem from the Federal Land Policy and Management Act of 1976 (FLPMA, PL 94-579), the Alaska National Interest Lands Conservation Act (ANILCA, PL 96-487, 1980), and the National Forest Roads and Trails Act of 1964 (FRTA, PL 88-657).

To use a NFS road or trail that is otherwise restricted, written authorization or written exemption from the Forest Service is needed. Such authorization or exemption is gained through the following:

- Grant of an easement,
- Issuance of a special use permit,
- Issuance of a road use permit, or
- Identifying an exemption to a closure order issued under 36 CFR 261.50.

Forest Service travel restrictions generally do not affect or limit such valid authorized rights of access, unless the restrictions are specifically made part of the authorization, and accepted by the easement grantee or permit holder.

Following are two examples of access rights granted by the Forest Service to other parties. The Forest Service granted easements to the City of Bozeman for use of roads across NFS land in the Bozeman Creek drainage to provide access to intermingled City-owned lands. The Forest Service granted a special use permit to Snowy Range Ranch for its private use of the upper portion of East Fork Mill Creek Road #3280 across NFS land. In both situations, the Forest Service restricts public motorized use of these roads, but the agency authorizes the landowner to use the roads to access private lands.

### **Outstanding Rights and Reservations**

Rights for private parties to use certain NFS roads or trails that are otherwise restricted may exist for other reasons. Following are two situations that may create such rights.

1. **Outstanding Rights:** A landowner may grant an easement to another party, often for ingress/egress on a road. Then, subsequent to that grant of access, the U.S. may acquire lands, by purchase, exchange or donation, for addition to the Gallatin National Forest. In those cases, the U.S. may take title to the acquired lands “subject to” the **outstanding rights** of access granted by a former owner.

An example of an outstanding right held by another party is in the Taylor Fork. The U.S. purchased lands from 320 Ranch, subject to an outstanding right for a road easement previously granted by 320 Ranch to another owner in Section 17.

2. **Reserved Rights.** In completing a land transaction (purchase, exchange or donation), or in acquiring an easement across private land, the landowner may elect to **reserve** (retain) access rights on and across the land or the easement conveyed to the U.S. In these situations, the U.S. may take title to the land or to the easement with rights that are **reserved** by the landowner. Those rights may or may not be assignable to others, depending on specifically what rights were reserved in the deed or easement.

An example of a reserved access right is Olson Creek Road #6944 in the Bangtails. The landowner (Wytana Livestock) granted an easement for this road to the U.S., and the Forest Service became the road manager, but in so doing, the landowner reserved rights to use and cross this road to access its private lands.

### **Public Roads**

Forest Service travel management decisions do not apply to “public roads” that are not under Forest Service jurisdiction. Certain roads that provide access to and across NFS lands are actually public roads, not Forest Service roads. “Public roads” are roads under the jurisdiction of, and managed by, a Municipality, a County, State (Dept. of Transportation), or the Federal Highway Administration (FHWA). Since public roads are not under Forest Service jurisdiction, they are not subject to Forest Service travel management decisions.

Examples of public roads that cross NFS land on the Gallatin NF include the Beartooth Highway #212 (managed by FHWA), Bridger Canyon Highway #86 (managed by the State) and Tom Miner Basin Road (managed by Park County).

### **RS 2477 Roads**

A provision of the mining laws of 1866, codified as Revised Statute (RS) 2477, provided for an open grant of rights-of-way for “public highways” on federal public land that was not otherwise reserved for public use.

To create a valid public right-of-way (RS 2477 road), a road must meet three elements: (1) actually constructed; (2) dedicated to public use in accordance with state or territorial laws, and (3) on federal land that was open and not reserved for a National Forest or for other purposes. Once so established, the road rights-of-way remains valid notwithstanding subsequent reservation of the land for National Forest purposes, or the repeal of RS 2477 by FLPMA in 1976, unless the road was abandoned by the state or county having jurisdiction under state law.

To determine if the elements for creation of a valid RS 2477 road exist requires an examination of applicable historical records, maps and other evidence. Such a determination is a complex title question. The Forest Service does not have authority to adjudicate title. That authority resides in the Federal District Courts pursuant to the Quiet Title Act. In addition, by law (Appropriations Act of 1997), and also by national and regional policy, the Forest Service and other federal agencies are currently restricted from developing final rules or regulations pertaining to the validity of a right-of-way pursuant to RS 2477, pending further Congressional action.

To date, on the Gallatin National Forest, no valid RS 2477 roads have been determined through an adjudication process. However, the existence of valid RS 2477 roads could be determined in the future. If a valid RS 2477 road is determined in the future, then Forest Service travel management decisions would not be applicable, same as for public roads.

For further information, please contact Bob Dennee or Fred Haas in Lands on the Gallatin National Forest.