

# Committee on Natural Resources

Rob Bishop Chairman  
Mark-Up Memorandum

March 14, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff — Brent Blevins  
Subcommittee on Federal Lands

Mark-Up: Markup on H.R. 3826 (Rep. Greg Walden), To amend the Omnibus Public Land Management Act of 2009 to modify provisions relating to certain land exchanges in the Mt. Hood Wilderness in the State of Oregon.  
March 15-16, 2016; 1324 Longworth HOB

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## **H.R. 3826 (Rep. Walden), “Mount Hood Cooper Spur Land Exchange Clarification Act”**

### **Summary of the Bill**

H.R. 3826, introduced by Rep. Greg Walden (R-OR) amends the Omnibus Public Land Management Act of 2009 to revise details of the Cooper Spur-Government Camp land exchange between the United States and Oregon. The bill was introduced October 23<sup>rd</sup>, 2015.

### **Cosponsors**

Rep. Earl Blumenauer (D-OR)

### **Background**

Section 1206 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11) included authorization for a land exchange to allow development of 120 acres of federal land in Government Camp, Oregon in exchange for 770 acres of non-federal land at Cooper Spur.

Despite language in the 2009 law that the intent of Congress was for the exchange to be completed within 16 months after the date of enactment, over six years passed without completion of the exchange. The long delay, primarily due to disagreements surrounding easement terms, frustrated the local communities, Mt. Hood Meadows, and other interested parties.

On September 30, 2015, the Forest Service and Mt. Hood Meadows engaged in a mediation session in an attempt to resolve the easement terms in dispute. Subsequently, the parties released a joint statement that they arrived at mutually satisfactory terms during the mediation session.

H.R. 3826 updates the details and process for the land exchange to clarify issues relating to land appraisals and the parameters of a wetland conservation easement on the Federal land in the conveyance.

After the final appraised value of the Federal and nonfederal lands is determined and approved by the Department of Agriculture (USDA), the USDA shall not be required to reappraise or update such value for a period of up to three years, unless the condition of any of the lands is significantly and substantially altered by fire, windstorm, or other events.

Conveyance conditions are revised regarding wetland boundaries on the Federal land, reservation of a nonexclusive trail easement, and equalization of values of the exchange properties.

### **Major Provisions/Analysis of H.R. 3826**

#### **Section 1 – Short Title**

#### **Section 2 – Cooper Land Spur Exchange**

- Clarifies the exact acreage of the federal parcels to be exchanged in Government Camp, Oregon as reflected by a detailed survey performed by the Forest Service in 2010.
- Gives a concrete deadline for selection of an appraiser, as opposed to the more discretionary "as soon as practicable" in current law.
- Requires assignation of a separate value for each tax lot involved in the exchange to facilitate equalization of values, as opposed to broad scale valuation of each large parcel, which is more cumbersome and time-consuming to divide during the equalization process.
- Clarifies that a final appraisal shall be valid for a period of up to three years, pending significant and substantial alteration of the exchanged parcels. This clarifies the duration of validity of a final appraisal for lands that are substantially unchanged and ensures the completion of the exchange will not be delayed by the need to update a final appraisal for such lands, if for some reason other aspects of the exchange are slowed.
- Clarifies that before the land exchange is finalized, the complete appraisals will be made available for public review. This ensures the public has access to and may be informed about the appraised value of the parcels to be exchanged, increasing transparency for the valuation process.
- Specifies a more concrete deadline for completion of the exchange as one year after the Clarification Act passes. This ensures the Forest Service is held to a deadline for implementing the original statutory direction, as clarified by the amended bill.

- Removes the Forest Service's obligation to complete a conservation easement protecting the wetlands, a process which was under negotiation for months and significantly delayed steps forward on the exchange. The Act clarifies that Congressional intent for protection of the delineated wetland(s) is satisfied by protections required under applicable federal, state, and/or local law without the added layer of complication of a Forest Service-administered easement.
- Clarifies the appropriate width of a required trail easement over the Federal land, consistent with the Forest Service's standard widths applied to the Mount Hood Meadows Special Use Permit Area to eliminate further delays
- Clarifies certain details regarding the procedures for equalization of values, allowing the parties to adjust land area to equalize values while also allowing Mt. Hood Meadows to donate to the United States lesser areas of land if necessary to equalize values.

### **Cost**

A Congressional Budget Office cost estimate has not yet been completed for this bill.

### **Administration Position**

The Administration testified at a Federal Lands Subcommittee hearing about H.R. 3826 on February 25, 2016<sup>1</sup>. The Administration asked for changes to four provisions in the bill and offered to work with the Sponsor to address these issues.

### **Anticipated Amendments**

- An amendment will be offered to address concerns raised by the U.S. Forest Service during testimony on the bill. Includes new language to clarify the type of easement allowed under the legislation. Also removes the time requirements for the Forest Service to implement the legislation.

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<sup>1</sup> [http://naturalresources.house.gov/uploadedfiles/testimony\\_casamassa.pdf](http://naturalresources.house.gov/uploadedfiles/testimony_casamassa.pdf)

## Effect on Current Law (Ramseyer)

### Showing Current Law as Amended by HR 3826

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

## Omnibus Public Land Management Act of 2009, Public Law 111-11

### SEC. 1206. LAND EXCHANGES.

#### (a) Cooper Spur-Government Camp Land Exchange.--

##### (1) Definitions.--In this subsection:

(A) County.--The term "County" means Hood River County, Oregon.

(B) Exchange map.--The term "exchange map" means the map entitled "Cooper Spur/Government Camp Land Exchange", dated June 2006.

(C) Federal land.--The term "Federal land" means the approximately [120] 107 acres of National Forest System land in the Mount Hood National Forest in Government Camp, Clackamas County, Oregon, identified as "USFS Land to be Conveyed" on the exchange map.

(D) Mt. hood meadows.--The term "Mt. Hood Meadows" means the Mt. Hood Meadows Oregon, Limited Partnership.

(E) Non-federal land.--The term "non-Federal land" means--

(i) the parcel of approximately 770 acres of private land at Cooper Spur identified as "Land to be acquired by USFS" on the exchange map; and

(ii) any buildings, improvements, furniture, fixtures, and equipment at the Inn at Cooper Spur and the Cooper Spur Ski Area covered by an appraisal described in paragraph (2)(D).

##### (2) Cooper spur-government camp land exchange.--

(A) Conveyance of land.--Subject to the provisions of this subsection, if Mt. Hood Meadows offers to convey to the United States all right, title, and interest of Mt. Hood Meadows in and to the non-Federal land, the Secretary shall convey to Mt. Hood Meadows all right, title, and interest of the United States in and to the Federal land (other than any easements reserved under subparagraph (G)), subject to valid existing rights.

(B) Compliance with existing law.--Except as otherwise provided in this subsection, the Secretary shall carry out the land exchange under this subsection in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(C) Conditions on acceptance.--

(i) Title.--As a condition of the land exchange under this subsection, title to the non-Federal land to be acquired by the Secretary under this subsection shall be acceptable to the Secretary.

(ii) Terms and conditions.--The conveyance of the Federal land and non-Federal land shall be subject to such terms and conditions as the Secretary may require.]

As a condition of the land exchange under this subsection, title to the non-Federal land to be acquired by the Secretary under this subsection shall be acceptable to the Secretary.

(D) Appraisals.--

(i) In general.—[As soon as practicable after the date of enactment of this Act, the Secretary and Mt. Hood Meadows shall select] Not later than 60 days after the date of the enactment of the Mount Hood Cooper Spur Land Exchange Clarification Act, the Secretary and Mt. Hood Meadows shall jointly select an appraiser to conduct an appraisal of the Federal land and non-Federal land.

(ii) Requirements.—[An appraisal under clause (i) shall] Except as provided under clause (iii), an appraisal under clause (i) shall assign a separate value to each tax lot to allow for the equalization of values and be conducted in accordance with nationally recognized appraisal standards, including--

(I) the Uniform Appraisal Standards for Federal Land Acquisitions; and

(II) the Uniform Standards of Professional Appraisal Practice.

(iii) Final Appraised Value.—

(I) In General.—Subject to subclause (II), after the final appraised value of the Federal land and the non-Federal land are determined and approved by the Secretary, the Secretary shall not be required to reappraise or update the final appraised value for a period of up to 3 years, beginning on the date of the approval by the Secretary of the final appraised value.

(II) EXCEPTION.--Subclause (I) shall not apply if the condition of either the Federal land or the non-Federal land referred to in subclause (I) is significantly and substantially altered by fire, windstorm, or other events.

(iv) Public Review.—Before completing the land exchange under this Act, the Secretary shall make available for public review the complete appraisals of the land to be exchanged.

(E) Surveys.--

(i) In general.--The exact acreage and legal description of the Federal land and non-Federal land shall be determined by surveys approved by the Secretary.

(ii) Costs.--The responsibility for the costs of any surveys conducted under clause (i), and any other administrative costs of carrying out the land exchange, shall be determined by the Secretary and Mt. Hood Meadows.

(F) Deadline for completion of land exchange.--It is the intent of Congress that the land exchange under this subsection shall be completed not later than [16 months after the date of enactment of this Act] 1 year after the enactment of the Mount Hood Cooper Spur Land Exchange Clarification Act.

[(G) Reservation of easements.--As a condition of the conveyance of the Federal land, the Secretary shall reserve--

(i) a conservation easement to the Federal land to protect existing wetland, as identified by the Oregon Department of State Lands, that allows equivalent wetland mitigation measures to compensate for minor wetland encroachments necessary for the orderly development of the Federal land; and

(ii) a trail easement to the Federal land that allows--

(I) nonmotorized use by the public of existing trails;

(II) roads, utilities, and infrastructure facilities to cross the trails; and

(III) improvement or relocation of the trails to accommodate development of the Federal land.]

(G)Required Conveyance Conditions.—Prior to the exchange of the Federal and non-Federal land—

(i) in full satisfaction of Executive Order 11990, Mt. Hood Meadows shall obtain the concurrence of the Oregon Department of State Lands with the identification of wetland boundaries on the Federal land as designated on a wetland delineation report prepared by an independent professional engineer registered in the State of Oregon so as to provide protection of the identified wetland according to applicable law; and

(ii) the Secretary shall reserve a 24-foot-wide nonexclusive trail easement at the existing trail locations on the Federal land that retains for the

United States existing rights to construct, reconstruct, maintain, and permit nonmotorized use by the public of existing trails subject to the right of the owner of the Federal land—

(I) To cross the trails with roads, utilities, and infrastructure facilities; and

(II) To improve or relocate the trail to accommodate development of the Federal land.

(H) Equalization of Values.

(i) In General.—Notwithstanding subparagraph (A), in addition to or in lieu of monetary compensation, a lesser area of Federal land or non-Federal land may be conveyed if necessary to equalize appraised values of the exchange properties, without limitation, consistent with the requirements of this Act and subject to the approval of the Secretary and Mt. Hood Meadows.

(ii) Treatment of Certain Compensation or Conveyances as Donation.—If, after payment of compensation or adjustment of land area subject to exchange under this Act, the amount by which the appraised value of the land and other property conveyed by Mt. Hood Meadows under subparagraph (A) exceeds the appraised value of the land conveyed by the Secretary under subparagraph (A) shall be considered a donation by Mt. Hood Meadows to the United States.

(b) Port of Cascade Locks Land Exchange.--

(1) Definitions.--In this subsection:

(A) Exchange map.--The term "exchange map" means the map entitled "Port of Cascade Locks/Pacific Crest National Scenic Trail Land Exchange", dated June 2006.

(B) Federal land.--The term "Federal land" means the parcel of land consisting of approximately 10 acres of National Forest System land in the Columbia River

Gorge National Scenic Area identified as "USFS Land to be conveyed" on the exchange map.

(C) Non-federal land.--The term "non-Federal land" means the parcels of land consisting of approximately 40 acres identified as "Land to be acquired by USFS" on the exchange map.

(D) Port.--The term "Port" means the Port of Cascade Locks, Cascade Locks, Oregon.

(2) Land exchange, port of cascade locks-pacific crest national scenic trail.--

(A) Conveyance of land.--Subject to the provisions of this subsection, if the Port offers to convey to the United States all right, title, and interest of the Port in and to the non-Federal land, the Secretary shall, subject to valid existing rights, convey to the Port all

right, title, and interest of the United States in and to the Federal land.

(B) Compliance with existing law.--Except as otherwise provided in this subsection, the Secretary shall carry out the land exchange under this subsection in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(3) Conditions on acceptance.--

(A) Title.--As a condition of the land exchange under this subsection, title to the non-Federal land to be acquired by the Secretary under this subsection shall be acceptable to the Secretary.

(B) Terms and conditions.--The conveyance of the Federal land and non-Federal land shall be subject to such terms and conditions as the Secretary may require.

(4) Appraisals.--

(A) In general.--As soon as practicable after the date of enactment of this Act, the Secretary shall select an appraiser to conduct an appraisal of the Federal land and non-Federal land.

(B) Requirements.--An appraisal under subparagraph (A) shall be conducted in accordance with nationally recognized appraisal standards, including--

- (i) the Uniform Appraisal Standards for Federal Land Acquisitions; and
- (ii) the Uniform Standards of Professional Appraisal Practice.

(5) Surveys.--

(A) In general.--The exact acreage and legal description of the Federal land and non-Federal land shall be determined by surveys approved by the Secretary.

(B) Costs.--The responsibility for the costs of any surveys conducted under subparagraph (A), and any other administrative costs of carrying out the land exchange, shall be determined by the Secretary and the Port.

(6) Deadline for completion of land exchange.--It is the intent of Congress that the land exchange under this subsection shall be completed not later than 16 months after the date of enactment of this Act.

(c) Hunchback Mountain Land Exchange and Boundary Adjustment.--

(1) Definitions.--In this subsection:

(A) County.--The term "County" means Clackamas County, Oregon.

(B) Exchange map.--The term "exchange map" means

the map entitled "Hunchback Mountain Land Exchange, Clackamas County", dated June 2006.

(C) Federal land.--The term "Federal land" means the parcel of land consisting of approximately 160 acres of National Forest System land in the Mount Hood National Forest identified as "USFS Land to be Conveyed" on the exchange map.

(D) Non-federal land.--The term "non-Federal land" means the parcel of land consisting of approximately 160 acres identified as "Land to be acquired by USFS" on the exchange map.

(2) Hunchback mountain land exchange.--

(A) Conveyance of land.--Subject to the provisions of this paragraph, if the County offers to convey to the United States all right, title, and interest of the County in and to the non-Federal land, the Secretary shall, subject to valid existing rights, convey to the County all right, title, and interest of the United States in and to the Federal land.

(B) Compliance with existing law.--Except as otherwise provided in this paragraph, the Secretary shall carry out the land exchange under this paragraph in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(C) Conditions on acceptance.--

(i) Title.--As a condition of the land exchange under this paragraph, title to the non-Federal land to be acquired by the Secretary under this paragraph shall be acceptable to the Secretary.

(ii) Terms and conditions.--The conveyance of the Federal land and non-Federal land shall be subject to such terms and conditions as the Secretary may require.

(D) Appraisals.--

(i) In general.--As soon as practicable after the date of enactment of this Act, the Secretary shall select an appraiser to conduct an appraisal of the Federal land and non-Federal land.

(ii) Requirements.--An appraisal under clause (i) shall be conducted in accordance with nationally recognized appraisal standards, including--

- (I) the Uniform Appraisal Standards for Federal Land Acquisitions; and
- (II) the Uniform Standards of

Professional Appraisal Practice.

(E) Surveys.--

(i) In general.--The exact acreage and legal description of the Federal land and non-Federal land shall be determined by surveys approved by the Secretary.

(ii) Costs.--The responsibility for the costs of any surveys conducted under clause (i), and any other administrative costs of carrying out the land exchange, shall be determined by the Secretary and the County.

(F) Deadline for completion of land exchange.--It is the intent of Congress that the land exchange under this paragraph shall be completed not later than 16 months after the date of enactment of this Act.

(3) Boundary adjustment.--

(A) In general.--The boundary of the Mount Hood National Forest shall be adjusted to incorporate--

(i) any land conveyed to the United States under paragraph (2); and

(ii) the land transferred to the Forest Service by section 1204(h)(1).

(B) Additions to the national forest system.--The Secretary shall administer the land described in subparagraph (A)--

(i) in accordance with--

(I) the Act of March 1, 1911 (commonly known as the "Weeks Law") (16 U.S.C. 480 et seq.); and

(II) any laws (including regulations) applicable to the National Forest System; and

(ii) subject to sections 1202(c)(3) and 1204(d), as applicable.

(C) Land and water conservation fund.--For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Mount Hood National Forest modified by this paragraph shall be considered to be the boundaries of the Mount Hood National Forest in existence as of January 1, 1965.

(d) Conditions on Development of Federal Land.--

(1) Requirements applicable to the conveyance of federal land.--

(A) In general.--As a condition of each of the

conveyances of Federal land under this section, the Secretary shall include in the deed of conveyance a requirement that applicable construction activities and alterations shall be conducted in accordance with--

- (i) nationally recognized building and property maintenance codes; and
- (ii) nationally recognized codes for development in the wildland-urban interface and wildfire hazard mitigation.

(B) Applicable law.--To the maximum extent practicable, the codes required under subparagraph (A) shall be consistent with the nationally recognized codes adopted or referenced by the State or political subdivisions of the State.

(C) Enforcement.--The requirements under subparagraph (A) may be enforced by the same entities otherwise enforcing codes, ordinances, and standards.

(2) Compliance with codes on federal land.--The Secretary shall ensure that applicable construction activities and alterations undertaken or permitted by the Secretary on National Forest System land in the Mount Hood National Forest are conducted in accordance with--

- (A) nationally recognized building and property maintenance codes; and
- (B) nationally recognized codes for development in the wildland-urban interface development and wildfire hazard mitigation.

(3) Effect on enforcement by states and political subdivisions.--Nothing in this subsection alters or limits the power of the State or a political subdivision of the State to implement or enforce any law (including regulations), rule, or standard relating to development or fire prevention and control.