EVALUATION OF THE APPRAISAL ORGANIZATION OF THE DEPARTMENT OF INTERIOR BUREAU OF LAND MANAGEMENT

INCLUDING A SPECIAL EVALUATION OF AN ALTERNATIVE APPROACH USED IN ST. GEORGE, UTAH

OCTOBER 9, 2002

CONTRACT No. NAC020051

TO

ASSISTANT DIRECTOR, MINERALS, REALTY & RESOURCE PROTECTION, and
WASHINGTON OFFICE – CHIEF LANDS & REALTY

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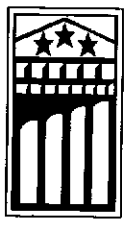

THE APPRAISAL FOUNDATION
Authorized by Congress as the Source of Appraisal Standards and Appraiser Qualifications

EVALUATION OF THE APPRAISAL ORGANIZATION OF THE DEPARTMENT OF INTERIOR BUREAU OF LAND MANAGEMENT

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Executive Summary:
Bureau of Land Management Appraisal Function Evaluation by The Appraisal Foundation

Background

This report contains The Appraisal Foundation's (Foundation) response to the Department of the Interior, Bureau of Land Management's (BLM) request for program evaluations relating to the BLM's general application of the appraisal function[1] and a specific related situation in Washington County, Utah.

The Foundation performed a similar evaluation for the USDA Forest Service (USFS) in 2000.[2] This study resulted in a number of recommendations which have been successfully implemented.

The current study was conducted by a five member team (Foundation Team). It considers a July 2001 report of the Department of Interior's (DOI) Office of Inspector General (OIG) criticizing aspects of the BLM's conduct and management of the appraisal function.[3] That report recommends that the BLM should:

1. Obtain a peer review from the Foundation of BLM's appraisal organization, policies, and procedures, including an evaluation of the alternative approach implemented in Washington County, Utah.

2. Implement the changes recommended by the peer review to ensure that BLM has a first-class appraisal system that protects the integrity and independence of the appraisal process.

This Executive Summary sets forth a statement of our specific tasks as outlined in the Foundation's contract with the BLM dated March 1, 2002, an

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[1] The term "appraisal function" is used herein to broadly refer to organization, conduct, and management of operations that deal with or rely upon the development of market value opinions by qualified appraisers and review appraisers as defined by law, regulations, and appraisal standards.

[2] The Appraisal Foundation. "Evaluation of the Appraisal Organization of the USDA Forest Service." Solicitation No. WO-99-13, Contract No. 53-3187-9-03. Washington, D.C. March 28, 2000.

[3] U.S. Department of the Interior, Office of Inspector General. "Land Exchanges and Acquisitions, Bureau of Land Management, Utah State Office." Report No. 2001-I-413. July 2001.

explanation of the scope of the Team's work program, and a summary of findings and recommendations. Explanations and further background are contained in the report that follows.

Purpose of the Assignment

The BLM engaged the Foundation to perform the following tasks:

1. Examine BLM [Appraisal] Manual 9310 and other written guidance to ascertain compliance with the Uniform Standards of Professional Appraisal Practice (USPAP),[4] the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA),[5] and the BLM Exchange Handbook[6] and to identify any inconsistencies and recommend approaches to problem corrections.

2. Determine what organizational changes, if any, are warranted to improve the quality and consistency of appraisal services provided at the Washington, D.C. and Field office levels. This includes protection of the integrity of the appraisal process, ensurance of accountability of appraisers in accordance with industry standards, identification of ways to prevent management interference, and provision of ensurance of separation of negotiations and the appraisal process.

3. Evaluate the approach of the review appraiser in Washington County, Utah to determine compliance with USPAP in appraisals and appraisal reviews, and to ascertain whether the reviewer was reasonably impartial and objective in making recommendations to the BLM Utah State Director; examine issues related to the Delegation of Authority.[7]

Sections 2, 3, and 4 of this report sequentially address each of these tasks.

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[4] The Appraisal Foundation. Uniform Standards of Professional Appraisal Practice. Washington, D.C. 2002. (USPAP 2002).

[5] Interagency Land Conference. Uniform Appraisal Standards for Federal Land Acquisitions. Washington, D.C. 2000. (UASFLA 2000).

[6] United States Department of the Interior, Bureau of Land Management. BLM Handbook H-2200-1. Land Exchange Handbook. Washington, DC. August 14, 1997.

[7] United States Department of the Interior, Bureau of Land Management. Contract No. NAC020051. Denver, CO. March 1, 2002.

Intended Use of the Report

This report is for the primary use of the BLM. We understand that it may also be used in conjunction with studies by the OIG, General Accounting Office (GAO), and/or other investigative or compliance agencies of the Federal government. It therefore contains details that might not be contained if the BLM were the only intended user. The Foundation has no restriction on the report's distribution so long as it is distributed in its entirety and without editing. Although information that may exceed the scope of our contract was gathered during our research, no attempt was made to expand our work program and report of findings and recommendations beyond what we believe is consistent with the assignment.

Scope, Work Program, Technical Requirements, Standards, and Logistics

BLM and Foundation staffs coordinated the acquisition of extensive background information. The operations of seven of the BLM's 11 western state offices were examined by Foundation Team visits, analysis of file data, and interviews with appraisal and non-appraisal staffs. Exhibit A contains a list of BLM state interviews. It also identifies abbreviations found in this report. Relevant written materials were assembled, analyzed, discussed, and evaluated by the Foundation Team. Special research and more detailed analysis were performed for the Washington County, Utah matters.

Foundation Team members studied pertinent laws, regulations, handbooks, and manuals, and gathered such additional written guidance pertaining to BLM conduct and management of the appraisal function as was available.[8] These materials were evaluated and reconciled with information and insights gleaned from field visits, interviews, and other research to permit required analysis.

No attempt was made by the Foundation Team to perform any "appraisal reviews" as defined by USPAP.[9] Members performed administrative evaluations, which did not require a conclusion of the quality of a particular appraisal or appraisal review of any given appraiser. Instead, we were responsible for determining whether the quality and consistency of appraisals

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[8] *Conduct* of the appraisal function refers to the ordering, development, and review of qualified appraisals by authorized BLM appraisal staff. *Management* of the appraisal function refers to the processes applied by the BLM to manage its appraisers and those who use appraisal services, while applying legal and regulatory requirements relating to the use of qualified opinions of market value.

[9] This was made necessary, in part, because the BLM was unable to produce a number of important appraisals, review appraisals, and related file data for the Washington County matter. BLM and Federal policies require that these files be a part of the BLM permanently archived records, but key portions were reported missing.

and appraisal reviews, and the evidences of their procurement, administration, and use merited organizational changes by the BLM.

Initial meetings with BLM Washington, D.C. staff and other Foundation Team research revealed that there was controversy within the BLM regarding the applicability of USPAP and UASFLA standards in the BLM's operations. To evaluate this issue, which is central to the appraisal function in the BLM and the Federal government at large, the BLM's application of the appraisal function and its interpretation of appraisal standards were considered in detail.

Foundation Team Support and BLM Records

The Foundation Team relied upon the assistance of the BLM's Contracting Officer's Representative (COR) in Denver, Colorado. Through the COR's efforts the Foundation Team was able to schedule appointments in Washington, D.C. and various states, and to obtain most requested research materials as they were identified. Despite extensive efforts, some crucial files relating to the Washington County, Utah matter were never found. This problem is discussed within this report.

Definition of Terms

Attempts were made to render a report that is as free from professional terms as possible to assist non-appraiser readers in understanding issues, information, evaluations, and conclusions. However, the nature of our assignment requires the use of certain terms that may not be familiar to some readers or may be misunderstood by those without professional appraisal backgrounds. To assist in understanding, a Glossary of Terms is included as Exhibit B.

Appraisal Standards, Principals, and Methods

Appraisal and appraisal review functions have diverse applications in the private sector, but within the Federal government they are viewed as *requirements* to assure compliance with the Constitution of the United States, various laws, and applicable regulations. Thus, they serve as a compliance function and a check and balance to the extent that they assure that Constitutional and other legal requirements are met. At the program level, complying market value[10] opinions of qualified appraisers are used in land transactions and exchanges involving the private sector.[11]

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[10] "Market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving

Some BLM management and realty staff claim that staff appraisers are slow, expensive, and/or unresponsive to BLM or project team goals. Some BLM appraisers are also said by Land and Realty specialists and management to be biased and obstructionist in their performance.[12] These views have been the focus of notable departures by the BLM from their conduct and management of the appraisal function. BLM appraisers respond by citing legal and professional requirements that they maintain their independence in developing market value opinions and in their compliance with Federally-recognized standards.

Appraisers and their professional opinions are not immune from the problems, abuses, and controversies that plague the public sector. Earlier concerns about the lack of national standards to qualify professional appraisers and review appraisers, and to develop credible and reliable opinions of market value, were central reasons for creation of The Appraisal Foundation. Standards and related requirements for ethical conduct of appraisers developed by the Foundation, and required by law, apply in both the public and private sectors, and are supplemented by standards that apply specifically in the public sector.[13]

"Appraiser problems" can also be a symptom of a greater problem. This was demonstrated by issues that involved real property appraisers during and after the Great Depression, the nation's urban renewal and highway programs, and

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due consideration to available economic uses of the property at the time of the appraisal." UASFLA 2000. §B-2. p. 30.

[11] In the OIG's 2001 report the phrase "independence and integrity of the appraisal process" was used. This aptly describes requirements of the Federal government, and the managers of BLM projects evaluated herein, to ensure that appraisal standards are met, that there is compliance with the laws dealing with development and use of qualified appraisals, and that appraisers are provided an environment that is separate from the property negotiations and/or management decisions that are to be based upon properly approved opinions of market value. The integrity of the BLM and its appraisers is placed in jeopardy when program management, or the malfeasance of individuals, destroys the independence and objectivity that are required of appraisers by law. Federal laws establish enforcement processes and penalties for violations of certain required processes.

[12] These assertions were publicly made in the Washington County and San Rafael exchanges, each in Utah, discussed later in this report. They were also made by BLM management during our interviews.

[13] The role of UASFLA is to serve as supplemental standards to USPAP and to provide for the jurisdictional exceptions and guidance that apply in the Federal jurisdiction.

more recent failures of the banks and savings and loan associations that led to major reforms.[14]

To fully understand the distinction between problems *created by* appraisers or appraisal services and problems that *involve* them or their services, a more complete understanding of the role and function of appraisers in the public and private sectors is needed. Exhibit C contains a review of the importance and nature of appraising, and that of applicable standards and ethics. Each is relevant to the Foundation Team's BLM evaluations and recommendations.

Principal Foundation Team Conclusions

The Foundation Team found a number of BLM deficiencies and appraisal function discontinuities. Operation and management of the appraisal function by non-appraisers, and interference with or failure to procure objective and independent market value opinions from authorized qualified appraisers, impose non-appraisal advocacy and bias into the appraisal function. These practices seriously erode the BLM's ability to apply appraisal standards and to consistently uphold the public trust assigned to them by law. It appears that violations of law may have occurred.

Information provided to the Foundation Team by Washington, D.C. staff was in part refuted by other BLM staff and written records. We found that the BLM has many dedicated and talented career people who are affected by the deficiencies noted herein. We also learned that BLM's staff have concerns about the BLM's delays in implementing needed corrections and its special, selective treatment of certain private lands. The BLM appears rife with internal dissatisfaction, confusion, controversy, and outside political pressures on its performance that affect the appraisal function and the BLM at large.

The BLM's organization, conduct, and management of the appraisal function made it impossible to pursue our evaluation by a singular analysis of appraisers engaged by or working for the BLM. An evaluation of appraisals and review appraisals would also be an incomplete and misleading exercise without understanding the background in which they were commissioned and their management and application by the BLM. Therefore, the Foundation Team concluded that the work program reflected herein was required if we were to responsibly complete the assigned tasks.

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[14] P.L. 101-73, 103 Stat. 183, 511 (Aug. 9, 1989). Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended. (FIRREA).

Sections 2, 3, and 4 follow the order of the Foundation's principal areas of evaluation, and discuss the following conclusions where appropriate. The Foundation Team summarizes its principal conclusions as follows:

Law, Policies, Standards, and Procedures Findings

Significant inconsistencies exist among BLM's written guidance and directives. They result in:

1. Inconsistent development of market value opinions due to the interruptions or avoidance of standard BLM appraisal methods and procedures by management.

2. Improper management of the appraisal function due to applications of alternative management processes which fail to recognize that qualified appraisal opinions must be of market value.

3. Lack of BLM appraisal function compliance with FLPMA[15] and/or FLEFA.[16]

Land activities involving the BLM's appraisal function are politicized, whereas market value opinions rendered by qualified appraisers should be free of political or job-related pressures that defy laws and/or appraisal standards. These pressures lead to:

1. Abuses of the public trust where there is failure to comply with laws or to conduct orderly operations in accordance with written guidance.

2. Development of a management "culture" that frequently supercedes written guidance and an administration that fosters controversy.

3. Interference with the technical and administrative functions of BLM appraisal staff, with resulting waste, inefficiency, abuse of law, and loss of Federal monetary and natural resources.

4. Special treatment of non-Federal land interests.

5. Confusion over what constitutes "the public interest."

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[15] Federal Land Policy and Management Act of 1976. (43 U.S.C. 1701 *et seq.*).

[16] Federal Land Exchange Facilitation Act of 1988. (43 U.S.C. 2200).

6. Pressures to change, or to ignore, qualified market value opinions in order to create the erroneous appearance that land exchanges or transactions are conducted at market value.

7. Claims of public interest benefits as a rationale for staff actions rather than clear and certain compliance with BLM requirements.

BLM Organizational Findings

By virtue of its decentralized approach to management of programs and staff, the BLM creates a structure in which the appraisal function's independence is subservient to management and realty staffs' drive to successfully close transactions, including land exchanges. BLM procedures place higher staff rewards for accomplishment of project-related goals than the overall objective of conducting a program that meets the organization's legal requirements and serving in a fiduciary capacity to uphold the public trust.

Noted problems of the BLM's organizational structure with regard to the appraisal function include:

1. Inconsistent Delegation of Authority processes. This is exacerbated by the absence of a clear appraisal organization and the conflicting nature of BLM's assignments of appraisal staff within the overall operation.

2. Failure to assist qualified and authorized appraisers to obtain facts and data that are necessary for professional appraisals and review appraisals, and substitution of processes that subject the appraiser, and the BLM, to the individual interests of private land owners.

3. Absence of distinction between the appraisal authority to approve a final opinion of market value and the management authority to recommend or approve a transaction or exchange price that is different from market value.

4. Avoidance of the organization's responsibilities to follow established and authorized appraisal and review appraisal procedures. This is demonstrated by management's substitution of alternative approaches that fosters criticisms of appraisers and appraisal processes as a principal justification for management departures.

5. Improper staff planning and/or organizational structure that result in insufficient time for technical and scientific functions, including appraisals and appraisal reviews, to be completed in an orderly fashion and to comply with legal and other requirements.

6. Avoidable delays in development or review of market value opinions. Causes include insufficient appraiser staffing, lessening of appraiser qualifications, decentralized and scattered appraiser assignments. BLM expansion of contract appraiser usage and acceptance of proponent appraisals in lieu of more efficient and effective processes are also programmatic problems.

BLM Appraisal Organization Findings

The Foundation Team concluded that there is no appraisal organization within the BLM as such. This lack of factual organization has permitted abuse of the appraisal function. It has led to a virtual disassembling of cohesive appraisal operations except in those states that have overcome the BLM's Washington, D.C. alternative approaches and failure to provide an appraisal organization.

The BLM acknowledged that it has no career path for an appraiser.[17] Despite the critical importance of obtaining market value opinions from qualified appraisers to meet legal requirements, BLM's appraisers generally are evaluated by non-appraisers and their work performance is supervised by managers who are responsible for completing land transactions and exchanges.

Instead of significant improvement of their organizational ability to perform appraisals and appraisal reviews, the BLM has permitted staff attrition and is now subject to the loss of substantial numbers of their most experienced appraisal staff. Management indicated that they are moving towards even greater reliance on contract appraisers by design. However, this practice adds to the problems they are attempting to solve and may be associated with program abuses. Contract appraisers can provide certain special skills and assist in situations of work overloads, but in conspicuous examples they have created greater delays, more cost, and less certainty of quality work than the use of staff appraisers.

Discussions relating to a number of additional deficiencies and Foundation Team recommendations are included in Sections 2, 3, and 4.

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[17] This is not to say that some staff appraisers may not move to more responsible positions, but there is no established line of succession or career development. Until recently, state appraisal licenses or certifications and participation in professional appraisal organizations were discouraged by the BLM Washington, D.C. office.

Material Weakness Status

On November 21, 2001 the Group Manager, Lands and Realty, submitted Washington, D.C.'s internal peer review report for BLM appraisal functions to the BLM Director. It noted many deficiencies in the BLM's appraisal function. Its principal conclusions are concurred in by the Foundation Team:[18]

> In summary, the reports reveal continuing problems related to compliance with BLM appraisal standards, inadequate management oversight, and unclear guidance regarding the authority to approve the prices paid in land purchase or exchange transactions. Management controls remain insufficient to ensure compliance with BLM regulations, appraisal standards, recently approved guidance, and training. Consequently, BLM's Real Estate Appraisal Function remains a Material Weakness.

The Foundation Team concluded that the steps BLM management has undertaken in recent years to remove this Material Weakness status have only in part addressed the core problems of the BLM. These include, but are not limited to, mismanagement of the appraisal function. The Material Weakness status continues to be weakly and ineffectively addressed in this regard. Further, issues such as those summarized in the BLM's peer review report appear to be only an element of systematic defects in the BLM's approach to its land and appraisal responsibilities cited within that report.

Summary of Principal Foundation Team Recommendations

The Foundation Team's principal recommendations are summarized below. They are considered necessary to protect the public interest in BLM's conduct and management of the appraisal function. They are discussed and supplemented with additional organizational and operational recommendations in the Sections that follow.

1. We recommend an investigation by the DOJ of BLM land activities such as those cited in previous OIG and GAO reports, recent Nevada exchange proposals, and the proposed San Rafael exchange.

2. We recommend a systematic legal review of laws, regulations, and other external guidance upon which BLM programs are based to determine where changes and clarifications are necessary.

[18] The Foundation Team assumes that the term "Material Weakness" denotes a condition that requires prompt correction to avoid abuse, waste, or fraud.

3. We recommend that the previously recommended moratorium on BLM land exchanges be implemented immediately and prior to the completion of the proposed San Rafael exchange. This moratorium should continue until completion of a comprehensive overhaul of the appraisal function, elimination of alternative approaches, and improvements in BLM Realty staff understanding of market value and its role in land transactions, including exchanges.

4. We recommend the establishment of a separate agency for the development and review of appraisals for the Federal government as a centralized agency. Alternatively, as a minimum, the DOI should create a centralized appraisal and appraisal review organization for the Department.

5. We recommend that, in reorganization of the appraisal function, mineral, timber, water rights, archaeology, and other specialty appraisers be included within the new organization.

6. We recommend that, until such time as the appraisal function can be reorganized, an independent *compliance officer for appraisals* be established for the BLM by the DOJ.

7. We recommend a series of changes to the BLM's written guidance and its conduct and management of the appraisal function as reflected in Sections 2, 3, and 4.

Section 1:
Foundation Team Work Program - Reasons and Design

Reasons for the Evaluation

Significant criticisms of the BLM's programs, centering on their conduct and administration of real property appraisal operations, culminated in a 2001 OIG report that served as a catalyst for this engagement of The Appraisal Foundation. To develop a work program that would be responsive to the requirements of the Foundation's contract with the BLM and the rationale for its request, it was necessary for the Foundation Team to become familiar with this OIG report and other related matters.

OIG Audits

The most recent OIG audit of BLM dealt primarily with exchange activity in Washington County, Utah near the St. George community.[19] Findings included:

- The integrity of the appraisal process may have been compromised;
- The appraisal process was not objective;
- Appraisal reviews did not meet standards;
- BLM personnel made a distinction between "market value" and "fair market value;" and
- A number of BLM cases were cited in which "values" of exchanged properties were not appropriate.

Prior audits, studies, and advisory opinions on BLM practices have been issued over the years. These include an audit of the Del Webb[20] and other Nevada land exchanges.[21]

The 1996 OIG Audit Report was the result of inquiry as to whether activities related to land exchanges in the Nevada State BLM office were in accordance with applicable laws and regulations and if fair market value on properties was obtained through the exchange process. In performing the audit the OIG studied federal laws regulating land exchanges and BLM internal processes on

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[19] Office of Inspector General Report. "Land Exchanges and Acquisitions, Bureau of Land Management, Utah State Office." No. 2001-I-413. July 2001.

[20] Office of Inspector General Report. "The Del Webb Land Exchange in Nevada, Bureau of Land Management." No. 98-I-363. March 1998.

[21] Office of Inspector General Report. "Final Audit Report on Nevada Land Exchange Activities, Bureau of Land Management." No. 96-I-1025. July 1996.

valuation; various land exchange files; land records indicating resale values; and, interviews with BLM officials and other government agencies regarding land exchange practices.

The report concluded that the BLM was inconsistent in following land exchange regulations and recommended the establishment of competitive procedures for land disposal process and controls to ensure that land exchanges are processed according to applicable laws and regulations.

The 1998 OIG Advisory Report was issued as a follow up to the July 1996 Audit Report and addressed concerns regarding the BLM's compliance with applicable standards, laws, and regulations in the appraisal of land for the Del Webb exchange. The OIG concluded that the BLM should establish a suspension of land exchanges in Nevada until new processes are established and implemented for land exchanges.

The OIG reports have consistently found that BLM does not follow its own established standards in the conduct of land exchanges, and that valuations frequently do not result in appropriate value indications of government lands.

GAO Studies

The GAO's 2000 study dealt with BLM and the USFS, and concentrated primarily on exchanges. It set out the requirements for exchanges and listed problem areas with exchanges in both agencies.[22] Problems noted included:

- Inappropriately valued land, including instances in which agency lands were grossly undervalued;
- Public interest not well documented; and,
- Lack of compliance with laws governing exchanges.

One of the GAO study's primary conclusions was that the inherent difficulties and complexities in land exchange are of such magnitude that Congress should consider discontinuing the agencies' land exchange programs.

Prior Evaluation of Forest Service by Appraisal Foundation

A team from the Foundation completed an evaluation of USFS appraisal function matters as a result of an audit by the GAO in which shortcomings relating to land exchanges were cited. The Foundation's study found no

[22] United States General Accounting Office. "BLM and the Forest Service: Land Exchanges Need to Reflect Appropriate Value and Serve the Public Interest." GAO/RCED-00-73. June 2000.

serious shortcomings, although it did make a number of recommendations to improve the USFS' appraisal practices in their exchange program.[23]

The Foundation's evaluation focused on the agency's overall appraisal organization. In general, the Foundation Report recommended a policy for all USFS staff to avoid any influence or activity that would be perceived as an attempt to influence staff or contract appraisers. The Report also recommended that a qualified staff appraiser or contract appraiser with no current or past significant involvement perform property appraisals with the owner or third party. Finally, in the course of its review, the Foundation Team found some instances where "fair market value" and "public interest value" were juxtaposed and market value was thus compromised. The Foundation report cautioned the USFS indicating that "an appraiser should not justify a purchase price based upon 'public interest value' when it is disguised as 'fair market value.' The Foundation team emphasized the UASFLA requirement that all appraisals for federal land acquisitions be prepared based upon [fair] market value.[24]

Public Inquiries

Various media reports and correspondence to newspapers and government officials were reviewed by the Foundation Team. These sources identified questionable BLM practices in large, highly visible land exchanges. These complaints consistently assert non-compliance with appraisal standards, inappropriate valuations, and conflicts of interest with outside parties involved in exchanges.

Authors of the various articles and letters that were reviewed allege violation of law, millions of dollars of lost revenue for the federal government, and BLM actions that are counter to the public interest in land exchange cases. In some instances they question BLM negotiations with landowners prior to, or in lieu of, procuring approved market value opinions from qualified appraisers.

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[23] The Appraisal Foundation. "Evaluation of the Appraisal Organization of the USDA Forest Service." Washington, D.C. March 28, 2000.

[24] UASFLA 2000 states, "The appraiser's estimate of highest and best use must be an economic use. A non-economic highest and best use, such as *conservation, natural lands, preservation,* or any use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value [citing UASFLA 2000 §B-3 for legal basis and reasoning]." Proponents of such invalid concepts have called value opinions based upon such uses, "public interest value." Despite the UASFLA 2000 prohibition, and similar prohibition that existed prior to the 2000 statement of Federal standards, the public interest value concept is widely used in BLM land activities.

Assertions by BLM Staff Appraisers

BLM staff appraisers have taken serious exception to management of some more visible land exchange projects for which BLM has been criticized. These include the criticisms of current and former BLM state Chief Appraisers and staff.

These appraisers and others assert that the BLM has essentially reached value agreements with landowners without obtaining qualified market value opinions for a number of high profile land exchange projects. This process is referred to as an "alternative approach," defined and discussed in Section 4.

Internal BLM Audits

In 2001, in response to OIG audit reports regarding public criticism of the BLM land exchange program, the BLM conducted a series of internal reviews. BLM State Offices visited during the course of this review included California, Idaho, Montana, Nevada, and Wyoming. Consistent with previous OIG audit and advisory reports, the internal review noted concern about BLM compliance with appraisal standards. Also cited in the reviews was concern regarding inadequate management oversight and a lack of guidance for the price approval in land acquisitions and exchanges. Overall, the audit indicated that the "BLM's Real Estate Appraisal Function remains a Material Weakness."[25] The report calls for appropriate actions to address these issues including improved overall compliance with standards, improved management oversight, and clarified delegation of authority in regard to the manager and review appraiser.

A similar audit was conducted in 2002. Its results were furnished too late for Foundation Team review.

BLM "Culture" and Appraisal Organization

From our first contact, BLM's Washington staff made it clear that the BLM considers its operations to center on what they call "the BLM culture." This culture, which is discussed in Section 3, operates as an overlay to the BLM's written organization and Delegations of Authority. Awareness of the culture helped to shape the Foundation Team's work program and its understanding of unique issues that involve the BLM. Failure to recognize and consider this culture and its effect would render our studies incomplete.

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[25] Group Manager, Lands and Realty. Memorandum to BLM Director. "Fiscal Year 2001 Assistance Review – Real Estate Appraisal Function." November 1, 2001. p. 1.

Design of the Work Program

The Foundation Team began its research presuming that the processes followed in the earlier USFS evaluation could essentially be replicated with the exception of the special study involving Washington County. After interviews with the Washington Chief, Lands and Realty, and the Senior Specialist-Appraisal, and after closer examination of the previous OIG and GAO studies, the requirement for a similar but expanded approach was determined to be appropriate.

Principal work program elements were designed to provide the Foundation Team a means of understanding the distinctions made by the BLM between its written guidance and the cultural, non-written, practices that are evidenced in BLM's alternative approaches. This was considered necessary to evaluate the management and conduct of the BLM's appraisal function and to analyze the actions of the Senior Specialist-Appraisal in Washington County, Utah.

Written guidance above state level was reviewed first to provide all Foundation Team members an understanding of the laws, regulations, and procedures that form the BLM's core guidance. We then sought written guidance at the state and field office levels, but found little additional information.

Interviews were conducted in seven western states to consider first-hand accounts of BLM practices, anecdotal information of strengths and weaknesses, discovery of issues and individuals to be added to our research list, obtain written records for supplemental analysis, and explore issues that were raised in previous evaluations. Interviews were also conducted with appraisers, land owners, other government employees, and former BLM employees.

The Foundation Team's interviews included Utah BLM personnel, where we attempted to procure appraisals, appraisal reviews, and file documentation that was considered necessary for completing the Foundation Team's Washington County mission. While considerable information was gathered, key case file records, appraisals, and appraisal reviews for an exchange and dozens of other transactions in the vicinity of St. George that involved the Senior Specialist-Appraisal were never found. The absence of this information forced an expansion in the scope of the Foundation Team's interviews and information gathering, and extended the time for completion of this report.

Due to the incomplete and missing information, the Foundation Team sought the assistance of the OIG and various individuals to determine whether all or part of the information could be found outside the BLM's official files. The OIG permitted consideration of portions of their research and furnished non-

confidential records for our analysis.[26] Some additional unofficial files were located in the personal possession of individuals and were very important to our analyses.

A more specific evaluation of the Senior Specialist's technical participation as an appraiser and a review appraiser in the Washington County matter would have been facilitated had the missing records been available. However, it is the opinion of the Foundation Team that sufficient information exists from our research to support the opinions and conclusions expressed herein.

[26] These records are non-confidential only with regard to our ability to consider them, but are not authorized for public release.

Section 2:
Identification and Evaluation of Formal Written BLM Appraisal Function Guidance

Introduction

A principal purpose of the Foundation Team's studies was an examination of BLM written guidance to identify inconsistencies with standards and recommend approaches to corrections. This section reviews laws and regulations, handbooks and manuals, and other written guidance upon which the BLM's appraisal function is based. Other comments and recommendations are contained in Exhibit D.

This section addresses a series of analyses, conclusions, and recommendations for corrections, including those previously identified in the Executive Summary. In order to analyze written guidance, portions of the following discussions necessarily overlap some considerations in Section 3.

Laws and Regulations

The principal laws and regulations that affect the BLM's appraisal activities and how they are applied include, but are not limited to, the following:

1. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (P.L. 91-646, as amended, 42 U.S.C. §4601, *et seq.*)
2. Federal Land Policy and Management Act of 1976. (43 U.S.C. 1701 *et seq.*)[27]
3. Financial Institutions Reform, Recovery and Enforcement Act of 1989. (P.L. 101-73, 103 Stat. 183, 511 (Aug. 9, 1989.))
4. Federal Land Exchange Facilitation Act of 1988. (P.L. 100-409, 102 Stat. 1086.)
5. 43 C.F.R. 2200, *et seq.* 77, 79, 84, 85, 86.

Evaluation of Written Guidance

The following discussion summarizes the Foundation Team's evaluation of the BLM's written appraisal function guidance. It reflects that inconsistencies and necessary clarifications require correction.

The BLM's existing appraisal policies are unclear, inconsistent, and lack sufficient detail to adequately address key areas of appraisal management of

[27] Note UASFLA 2000 footnote 368 for information regarding exceptions.

the appraisal function.[28] This defect is particularly true in the area of land exchanges where seemingly separate responsibilities and authorities are established for exchange teams, contrasted with those of the appraisal staff. Although they state that an appraisal will be obtained, neither 43 CFR 2200 nor BLM Manual 9310 unequivocally establish the role of the appraisal in the land exchange and acquisition processes.

Appraisal policies in the BLM's Manual 9310 are inconsistent with regard to certain key definitions, including "appraisal," "highest and best use," and "market value" and are particularly troublesome. These terms permeate each of these documents, giving subtle shades of meaning to the underlying methodologies presented and placing them at variance with other recognized standards. Subscribing to multiple authorities when their key terms are inconsistent or their methodologies conflict creates confusion and misunderstanding among appraisers as well as appraisal users. Existing policies also reference the application of UASFLA, USPAP, and the BLM's implementing regulations pursuant to FLPMA and FLEFA, adding to the confusion.

Similar appraisal and user confusion is generated by the BLM's approach to appraisals of multiple tracts and the appraiser's determination of "the larger parcel."[29] The technical approach taken by the BLM permits the valuation of larger land ownerships as though they were smaller parcels, commonly resulting in an overvaluation of such lands. By reversing this process for Federal lands, it is possible to undervalue Federal lands at the same time private lands are overvalued, increasing the net disparity. Appraisal methodologies, standards, and related laws do not require the special provisions made by the BLM and it is questionable whether the BLM processes are in the public interest.

The BLM has inconsistently distinguished between "fair market value" and "market value." Under the BLM's unique concept the two terms differ. Fair market value is said by some BLM management to incorporate a fairness issue from the perspective of an individual property owner. In practice, if the BLM determines that a "fairness" issue is present (and presumably that a public benefit will be realized by such determination), the BLM may be willing to

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[28] For example, see UASFLA 2000 discussions of Federal land exchanges in its §D-7. It is unclear why the BLM would require modifications to the terms "appraisal," "highest and best use," and "market value," or indeed if such difference is intended. Although BLM regulations can exist as an additional jurisdictional exception, there is serious question whether such exceptions permit the application of other appraisal standards and the requirements of laws relating to customary applications of market value.

[29] See UASFLA §D-7 for further explanation and citations.

pay a premium above market value. This permits a land transaction or an exchange to apply a higher price while seemingly meeting the market value standard. This is achieved by calling the price that includes the premium, "fair market value." The Foundation Team was unable to find justification for this difference within the BLM's written guidance or elsewhere. It appears that the application of the fair market value concept exceeds written guidance or Delegations of Authority, and that the concept and practice are misleading and improper.

The Foundation Team's research indicates that the BLM would be better served by separation of the appraisal function from negotiation, bargaining team, or other proponent related processes. There is persistent effort to engage BLM appraisal staff from start to finish of land exchanges, with the Exchange Handbook[30] encouraging that appraisers be involved even in the bargaining team activities.

We emphasize that there is no implicit loss of independence in an appraiser's (or a review appraiser's) discussions with a proponent, or a proponent's experts or representatives, so long as those contacts are confined to fact finding and the development of information that is necessary to the performance of appraisal services. However, the BLM is in error—and we concur that this is a Material Weakness—in encouraging that the appraisal staff contacts include meetings involving negotiations or bargaining with a proponent. USPAP provides that appraisers aid in promoting and maintaining a high level of public trust in professional appraisal practice. The BLM's practices, however, create undue pressures on its appraisal staff. The BLM damages the public trust when it asserts that its staff is biased, or questions their motivations and capabilities, and fosters situations that cast doubt upon their appraisers' professional competence and independence.

It is apparent that the recommended changes in the BLM appraisal function will take time to accomplish. This leads to the question of what steps the BLM should take until comprehensive changes are completed. The Foundation Team concluded that an investigation of the BLM's conduct and management of the appraisal function is warranted. Further, it was concluded that outside assistance is needed to reorganize the BLM's organization, conduct, and management of the appraisal function. Special interim written guidance is required until such time as more comprehensive solutions are implemented.

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[30] United States Department of Interior. Bureau of Land Management. Land Exchange Handbook. BLM Manual H-2200-1. Rel 2-286. August 14, 1997.

BLM's appraisal operation would benefit from the development and publication of more detailed policies with regard to when BLM appraisal staff should perform appraisal services and when they should be performed by contract appraisers. Currently the BLM appears to have no choice but to engage contract appraisers because of staff cutbacks, the range of technical matters that are, perhaps, presently better addressed by contractors, and the preparedness of existing staff to meet demands that they face. It is the internal policy of the BLM to seek more contractor appraisers and to use BLM appraisal staff for participation in "team efforts" with non-appraisal staff in discussions, negotiations, and bargaining with proponents, and in performing appraisal reviews.

It is apparent that some contract appraisers who are engaged by the BLM, or whose appraisals are furnished for BLM consideration, are not familiar with requirements of UASFLA. The use of such contractors frequently adds time and cost to the BLM's appraisal function. Further, the types of land and the nature of the BLM's transactions are such that an expertise in such lands can be developed, but may not by itself dictate that a private sector market for such appraisals will emerge. In fact, it has not. The bidding processes sometimes employed to select contractors frequently result in engagement of a lesser qualified contractor. Thus, there are both financial and other practical reasons why expansions of contractor involvement in BLM appraisals may not be to the benefit of the BLM. Some state BLM offices permit the use of appraisals submitted by a proponent to a land transaction or exchange. However, the acceptance or rejection of proponent appraisals is inconsistent.

The independence of the appraiser is of paramount importance to the validity and usefulness of the appraisal process. The engagement of an appraiser by a party who has a significant interest in the outcome of the appraisal can jeopardize that independence. Although the appraiser is required by professional ethics to remain impartial and objective, when the appraiser's client has an interest in the outcome of the appraisal the likelihood of coercion and pressure to arrive at a predetermined value opinion increases. This increases as the proponent's appraiser is encouraged by both the proponent and the BLM to participate in discussions involving negotiations or bargaining.

Due to budget limitations, or because some proponents (or "facilitators" in the instance of not-for-profit Trusts and others who frequently act as conduits in land transactions) do business regularly with the BLM, certain proponent appraisals may be accepted by the BLM. Frequently the appraisal fees are paid entirely by the proponent. These processes imply a fiscal benefit to the Federal government, particularly to establish the feasibility of a proposal.

However, conflicts and abuses may arise when the proponent or facilitator pre-selects the appraiser. This is particularly problematic when the BLM is not the client and the engaging entity. We observed programmatic problems even when a list of appraisers was proposed by the BLM from which a proponent was to choose.

Portions of the BLM's management and members of land exchange teams confuse an approved review of a market value appraisal by a duly qualified appraiser and a determination of value by management or management processes. The latter is a non-appraisal process applied in a transaction or an exchange and requiring special justification and support. This confusion creates potential for waste, abuses, or fraud.

This problem was observed in the St. George matter reviewed by the Foundation Team and again in the more recent controversy over the San Rafael land exchange. The BLM is granted authority under certain specified circumstances, with special qualifying requirements, to undertake land exchanges at other than market value. However, a determination of market value that is approved by a qualified BLM review appraiser is also required, except in certain exceptions, to at least determine whether the exchange values are approximately equal.

Because the term "value" is sometimes used by the BLM without appropriate identification of the type of value referenced, the BLM's responsibilities regarding market value are frequently not met. Although the words "value" and "market value" are found in the Exchange Handbook, they are not consistently differentiated.

Foundation Team interviews indicated BLM staff confusion as to who establishes market value for the BLM. Responses to inquiries of the BLM staff indicated a wide range of responses as to how, and by whom market value opinions are to be developed in BLM transactions and exchanges. Under applicable laws, and UASFLA and USPAP standards, only a qualified professional appraiser can *develop, review,* and *report* a market value opinion. Regardless of the administrative processes that may apply within the BLM, this is an important, but overlooked, truth that the BLM has not enforced. This does not change the fact that only certain persons within the BLM have a Delegation of Authority to *approve* a market value opinion that has been previously recommended by a qualified review appraiser.

The absence of enforcement of these understandings by BLM management is a central reason for controversies that have seriously affected the agency since at least the mid-1990s. It appears that this failure has survived recent changes

in the BLM's Delegation of Authority and the BLM Manual 9310 that were not fully implemented for the non-appraisal staff.

The concept of a voluntary exchange program has been established by Congress, but has led to a series of problems that plague the BLM. As implemented by the BLM, exchanges appear to fall into "go or no go" categories, but sometimes without objective determinations of feasibility. Those we interviewed indicated that lands and realty specialists frequently believed, or were told, that certain exchanges must be completed and that this emphasis is another evidence of the BLM's culture.

While "text book" examples of professional land exchanges do exist within the BLM, there are also some that fall significantly short of their requirements. If the exchange is insisted upon by a BLM staff member, manager, or other person of authority, regardless of the reason or motivation, the BLM is immediately at a disadvantage because market value is considered the *starting point* for an exchange. The concept of "negotiating" land exchanges thus begins with a serious program disadvantage.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 requires that the public be offered not less than market value. As a result, exchange processes tend to begin with market value as the minimum figure and then negotiate upwards until "mutual agreement can be reached;" this is a seriously flawed concept. If an owner wants more, the only way this can be accomplished directly is by changing the asserted market value of the proponent's lands to a higher number and/or reducing the asserted market value of the BLM's lands. Indirectly the BLM can employ various alternative land exchange methods so long as the premium price above market value can be justified in the public interest. However, we found no basis to conclude that market value is ever to be ignored in these processes.

UASFLA provides suggested guidelines for appraisals and appraisal reviews, and allows for agency supplements. The Foundation Team's Washington, D.C. and BLM state inquiries indicated that there is no standardized procedure within the BLM for either. The variations in appraisal procedures from state to state virtually preclude effective oversight of the program to assure legal and programmatic compliance. The absence of standardized forms and procedures also adds to the time and cost of appraisal function administration.

In sum, the Foundation Team found that BLM management of the appraisal function has sometimes resulted in compromise of the integrity of the appraisal process and has substituted processes that are not objective. Based upon the evaluations of previous audits, appraisal reviews performed in the

BLM's alternative approaches have failed to meet appraisal standards. The BLM's use of "fair market value" variations to replace "market value" are incorrect, misleading, and do not meet the standards for development and use of market value.

Foundation Team Recommendations

In light of the above discussions concerning written BLM appraisal function guidance, or its absence, we make the following recommendations:

1. We recommend an investigation by the DOJ of BLM land activities such as those cited in previous OIG and GAO reports, recent Nevada exchange proposals, and the proposed San Rafael exchange. The seriousness of public and governmental criticisms of BLM's past and currently proposed land exchanges, and their implications for the public trust, for which we find support, clearly warrant comprehensive investigation from outside the DOI. It is our opinion that previous actions taken by the DOI have been insufficient.

2. We recommend a systematic legal review of laws, regulations, and other external guidance upon which BLM programs are based to determine where changes and clarifications are necessary. This should include a review of FLPMA and FLEFA to clarify discretionary actions of management from requisite development of market value opinions by qualified appraisers. A top-to-bottom study of BLM policies and procedures is necessary to assure that they are proper extensions of laws, and that implementing regulations are clear and appropriate.

3. We recommend a series of changes to the BLM's written guidance and its conduct and management of the appraisal function as set forth in Sections 2, 3, and 4. These are considered necessary to provide for compliance with laws and appraisal standards, and to correct existing inconsistencies. We believe these changes will as a minimum provide clarifications for BLM's written guidance, aid in protecting the integrity of the appraisal process, ensure appraiser accountability, avoid management interference, and provide better separation of negotiations and the appraisal process.

4. We recommend the development and maintenance of a national roster of qualified contract appraisers. The BLM should take steps to assure that contract appraisers it engages are free from bias or special interest, are currently state certified, and are not currently

subject to public censure or other disciplinary action by a state or professional organization.

5. We recommend that, to the extent that there is a difference between the stated Delegation of Authority and the redelegation of that authority, the chain of authority be set forth in writing and be made known to the BLM staff and the public. Distinction should be made between authorities delegated to appraisers and those delegated to non-appraisers. We recommend that "alternative approaches" be discontinued and that Delegation of Authority processes be recognized without exceptions.

6. We recommend that FLEFA's provisions be better articulated by the BLM to assure that their obligation to follow established procedural processes in obtaining qualified market value opinions are met. To the extent that an arbitrator or a bargaining team may determine an "exchange value" that is different from market value, the difference should be carefully explained and justified in terms of *measurable public interest contribution*, with appropriate documentation.

7. We recommend that to the extent that the BLM considers there are necessary exceptions to USPAP and/or UASFLA standards, such exceptions be identified and reconciled with the legal authorities that flow with UASFLA. Current BLM practices permit the BLM to create exceptions to UASFLA, and thereby may constitute USPAP infractions. We recommend that the BLM consider standards to be what their name suggests, not a discretionary guide.

Section 3:
BLM's Organization and Management of the Appraisal Function

BLM Appraisal Function Overview

The Foundation Team conducted Washington, D.C. interviews with senior staff members with land responsibilities to understand the BLM's concept of organization, its management, and the role of the appraisal function. They provided the following explanations.

The Chief, Lands and Realty, and the Senior Specialist-Appraisal (who is referred to as a "Chief Appraiser," but has no such official title) are the senior Washington, D.C. leads for the BLM's appraisal function. Each was interviewed. They indicated that here are three to five individuals in Washington, D.C. and about 10 others in "field offices" who carry out the BLM's land program, assisted by staff in each of the state organizations.

The BLM's stated culture in the organization and conduct of Lands and Realty programs was stressed by both lead individuals. The culture was explained as a unique management system to deploy an array of skills and talents that must respond to the breadth of the BLM's land responsibilities. The BLM believes that they are notably distinct in that regard. There is special emphasis on land exchanges, stressing the importance of completing certain key exchanges. National teams assist in affecting land exchanges and right-of-way acquisitions.

Operations of the BLM were also said to be significantly different from other DOI agencies. This included decentralized operations, with programs conducted at the lowest feasible management and supervision level, generally the Field Office. The structure is designed to promote the BLM's ability to carry out its policy that land owners become a part of land-related functions, and that owners be able to "feel comfortable that they are treated fairly, avoiding the biases of BLM appraisers." BLM insists that owners and owner-engaged appraisers participate in ongoing contact with BLM appraisers and review appraisers. This is to make certain that the "right comps" are used and that "the owner's views are reflected in the final appraisals."

Some changes in BLM operations have been recently introduced and others are underway. Many are responses to appraisal function related criticisms of the BLM's operations by the OIG, GAO, members of Congress, and the public. Particular criticism is directed towards BLM's management of the nation's lands programs, particularly land exchanges. Claims are made that

the BLM violates its public interest responsibilities, internal obligations under various regulations, and possibly the laws of the United States.

The Washington, D.C. BLM leads distanced themselves from accusations and program problems by pointing out their lack of actual supervisory authority. Washington's role was explained as primarily policy setting, guidance, and oversight functions. They also aid in interpretations of programs and operational requirements. Assistance for managers who "do not understand their roles or what to do with specific problems" was also cited as a responsibility.

Within about the last five years, part of the BLM's internal reorganization was designed to move from a three tier (State–District Office–Field Office) organization to a two tier system that eliminates District Offices. This change preserves the BLM's determination that decentralized operations of Lands and Realty personnel continue, while allowing close contact with communities and individuals involved in their programs while maintaining better control.

The BLM does not recognize the appraisal function as a separate element of their organization. Instead, appraisers are customarily included within the day to day Lands and Realty program. BLM intends that appraisers work shoulder to shoulder with those who negotiate transactions and exchanges, relying upon each appraiser to perform professional appraisal functions and to withstand the admitted pressures that this form of organization places on each appraiser. The Lands and Realty Chief explained that land specialists are sensitive to criticisms and usually, but not universally, rely upon the appraiser to finally justify the "values" needed to complete activities such as exchanges. The Lands and Realty Chief asserted that the BLM does not want appraisers involved directly in land negotiations, but controversies and problems of BLM compliance with laws and regulations were acknowledged.

Basic authority for BLM programs is specified in a written Delegation of Authority. The Lands and Realty Chief pointed out that the Delegations of Authority for appraisers "only applied to appraisers," leaving the door open for non-appraisers to develop value opinions. Under current practices, appraisal authorities are derived from redelegations of authority rather than published authority.

The Senior Specialist pointed out the BLM's confusion over authority conveyed by the 1203 Delegation of Authority supplement and the BLM Manual 9310. He explained that the conflict was one that the Lands and Realty staff did not like because the managers and realty specialists want to control the issue of values in order to complete their projects. Appraisers are

sometimes perceived as obstacles interfering with specialists' projects and are singled out for criticism when appraisal authority is bypassed on a selective basis. Political pressures, separate goals of particular Lands and Realty staff, and the BLM culture were said to be major causes of the controversies and uncertainties.

The Senior Specialist identified a blurring of the lines between individual efforts and the results of teams, and asserted that "team work" was a strongly expressed management goal within the BLM. The Senior Specialist asserted that the organization "had been hollowed out" because performance was measured in terms of statistics and accomplishment of management goals. A lessening of the independence of appraisers and the enhancement of manager's ability to influence value opinions were identified as results of the BLM's organization and conduct of the appraisal function.

BLM State Office Overview

Evaluation Team members conducted interviews with appraisers and non-appraisal management and realty staffs in Colorado, New Mexico, Arizona, Utah, Idaho, Nevada, Oregon, and California. The principal purposes of these interviews were to:

1. Ascertain organization and management of the appraisal function within each state, recognizing BLM's decentralized management form;
2. Evaluate the operating effect of the appraisal function's organization and management in each state;
3. Obtain and analyze appraisal function guidance (manuals, instructions, standard operating procedures, etc.) established at the state level;
4. Discuss appraisal issues with individual appraisers and review appraisers, particularly the BLM state Chief Appraisers;
5. Procure case study information to permit greater depth in evaluating operations and management of the appraisal function.
6. Provide a basis for overall conclusions and specific recommendations required by the Foundation's contract.

The organization of the BLM varies from state to state. However, the appraisal function almost always falls under supervision of the Land and Realty[31] function. In the past, there have been staff appraisers in a number of District and Field Offices, but it appears that the decision has been made to relocate staff appraisers into more centralized State Offices.

[31] This function is identified differently in various BLM offices.

BLM personnel in different states have differing views regarding the role of appraisers. Appraisers, and the requirements related to development and review of market value opinions by qualified appraisers, are not well understood by non-appraisal staff. Although there are notable exceptions, many BLM state staff consider appraisers as obstructionists in the BLM's stated policies of closing assigned transactions and exchanges. The emphasis of programs and the evaluation of individual performance are on completions of transactions. We were also told that many BLM staff understand that this creates a conflict between management and/or specialist "success ratios" and the obligations of appraisers to independently develop market value opinions in accordance with laws and standards.

Many appraisers expressed professional concern over the pressures placed upon them to make themselves fully available to proponents of exchanges, and to proponent's lawyers and experts. They said there was no established line between data gathering or fact finding and the conduct of negotiations with private owners. By resisting situations that challenge the independence required of appraisers, BLM staff appraisers risk their jobs and/or their levels of compensation. The BLM's organizational framework was faulted for encouraging pressures on appraisers, particularly where the BLM's conduct and management of the appraisal function was seen to have an alternative overlay that belies its claims of program decentralization.

Some who were interviewed denied that pressure was applied to appraisers or that conduct of programs involving appraisers created any loss of appraiser independence. However, this was a minority view among both appraisers and non-appraisers. Some said that pressures to evade the requirements for development of market value opinions by qualified appraisers did not occur in their state, but did occur elsewhere. Others stated that the BLM's decentralization and the pressure to include appraisers in the actions of realty specialist teams were designed to permit the exertion of influence on appraisers, while lessening the need for management to arrive at exchange or transactions prices that were not supported by approved market value opinions.

Significant confusion was expressed over what constituted "value" and who had the authority to determine value. Even senior staff members explained that the need to clear this confusion was brought to management's attention over many years, without effective response. It was perceived that management was unwilling to respond because the confusion was helpful as a rationale for BLM's application of alternative approaches. There was understanding that the BLM had Delegation of Authority processes to conduct

its programs, but individuals were unclear where appraisers fit into these delegations. Most were not able to articulate whether a State Director had the authority to develop an opinion of market value, or whether the delegated authority permitted only determination of "value" in the sense of a program determination that all BLM legal and procedural requirements had been properly completed.

Considerable dissatisfaction exists with the content and BLM's use of the Manual 9310. The manual was seen in practice to be a "for appraisers' eyes only" document, with actual BLM emphasis on the Exchange Handbook and BLM's interpretations of laws and regulations. The term "value" was considered indefinite because it was applied in different ways, with a number of its applications confusing the management authority for "value" decisions with the underlying requirement that such decisions must consider market value opinions developed by qualified appraisers.

Although many BLM appraisers have good working relationships with management and realty specialists, as well as other BLM staff, non-appraisal staff mentioned a "love-hate relationship" between appraisers and those charged with completing transactions or exchanges. The problem is made especially difficult because of the lack of a career path for appraisers in the BLM, and their subservience to the supervision and evaluation by non-appraisers. Some management indicated that absence of peer management and evaluation of appraisers is not a particular problem because "management is trained to manage other professionals." However, the factors upon which appraisers are evaluated for advancement or compensation purposes are not based upon professional competence and growth, but more upon appraiser's ability to work within a land project team accomplishment context.

Appraisers and management expressed awareness that appraisers are often caught in the middle between the market values of appraised lands and the numbers that are required by management or specialists to complete land projects. When appraisers cite market data, standards, and the requirements of law as the basis for their professional opinions, they are sometimes criticized with assertions of bias and/or intent to impose their personal views on the BLM. This common situation is a primary basis for the BLM's determination that it can use its alternative approach in lieu of the Delegation of Authority approach. If the appraisers are engaging in professional misconduct, there are avenues for review and correction, but the Foundation Team found essentially no BLM effort to seek individual corrections where professional conduct issues may have been observed, whether appraisal or non-appraisal staff were involved.

The appraisal function is commonly viewed as including only real property appraisals, but timber, minerals, and other land issues also involve market value opinions and require qualified appraisers. There is recognition among many BLM staff that Federal standards are applicable to these disciplines and that such appraisers should be a part of a professional appraisal organization.

There was general consensus that a reorganization of the BLM was due. Many believe that appointment of a strong and experienced Chief Appraiser is crucial if the BLM is to meet legal obligations. Most appear to welcome a strong vertical organization[32] of appraisers that would remove them from the supervision and evaluation of non-appraisers. A significant number believe that the appraisal organization should be established at DOI level or in another Federal entity such as the DOJ.

The BLM staff interviews indicated that day to day operations of the appraisal function by management range from close adherence to BLM organizational framework and processes to total breakdowns of operations, management, adherence to appraisal standards, and assurance of compliance with law. The Foundation Team's interviews also found that the use of contract appraisers is increasingly encouraged by BLM management, but has not been entirely successful. Additionally, acceptance of proponent appraisals, inconsistent application of appraisal standards and their enforcement, use of market value opinions as "ranges of value," and other practices have led to problems of BLM's ability to meet the requirements of laws and regulations.

Conclusions Regarding the Appraisal Function

The Delegation of Authority process as implemented by the BLM inadequately provides for or assists in the conduct and administration of the appraisal function. The process provides for redelegations of authority, but is structured around other program activities. This leaves the appraisal function to rely upon the Manual 9310, which is inadequately integrated into land processes that require qualified market value opinions. Written guidance, internal procedures, and focus on non-appraisal matters result in an inconsistent process that is not organizationally oriented to make proper use of the appraisal function. Independence of appraisers and integrity of the appraisal function are lost by these processes. These conclusions do not apply to every BLM land activity or to all members of the BLM staff. However, the extent and seriousness of these problems infect the BLM's functioning.

[32] A vertical organization is generally taken to mean a centralized appraisal organization with a headquarters, a Chief Appraiser, and ability to operate as an independent entity insofar as appraisal independence and standards are concerned.

Appraisers are encouraged, and sometimes pressured, to participate in land program teams in such a way that the appraisal function is not consistently independent of negotiations or other program activities. This can threaten the independence of market value opinions. This encouragement is a key focus of BLM's management as a demonstration that they can induce voluntary land transactions, and thereby avoid eminent domain proceedings. In practice, management or land specialists may attempt to either "educate the appraisers to better understand the importance of a transaction or exchange," or place the appraiser in personal jeopardy if market value opinions fail to meet program objectives. This practice, which does not occur with every transaction or exchange, occurs with sufficient repetition to cause concern about the BLM's compliance with laws and regulations. It is also a basis for what appear to be unfounded accusations against appraisers that are used to justify avoidance of established appraisal processes and employment of the BLM's alternative approach.

"Team work" in some states permits appraiser independence and the development of better property and market data. In others this independence is challenged by management and land specialists who place responsibility on the team responsibilities of the appraiser to develop value opinions that will be acceptable to owners and thereby permit the closing of exchanges or other land transactions. In some instances, private property owners have been provided continuing direct access to appraisers and their data, and an opportunity to intercede in ongoing appraisal analysis. Owners have been given assurances of explicit value determinations, or the avoidance of selected BLM appraisers, by land specialists and/or management prior to the completion and review of qualified appraisals.

Distinction between the authority to *develop, review, or approve a final opinion of market value* (a qualified appraisal function) and the management authority to *recommend or approve a transaction or exchange price* that is different from market value (a management function) are not clearly defined. This results in controversy, waste of public resources, and instances in which the public trust has not been upheld.

Appraisal staffing through the decentralized management concept results in uneven geographic staffing and difficulty of deployment of special skills. BLM's policy is to make more extensive use of contract appraisers. The rationales of lower staff cost, faster delivery, and higher skills fail to recognize the detrimental impact on BLM's ability to engage and maintain quality staff or to benefit from the establishment of an appraisal career path. Contract appraisers are an excellent way to supplement skills and assist with workload overflows. However, their use fosters higher staff cost and longer completion

time when contract appraisers fail to comply with Federal appraisal standards or are less familiar with particular property types and locations. The BLM has also engaged in a practice of accepting proponent appraisals that are potentially detrimental to the public interest, and which contain appraisal methods and concepts that are contrary to UASFLA, despite the BLM's statements to the contrary.

BLM staff claim that staff appraisers are frequently too slow and costly to justify reliance upon them. In some instances this theme is extended to specialist and management decisions to bypass the BLM appraisal staff entirely. To the extent that such instances may occur, the Foundation Team's research indicates that the problem is a self-fulfilling prophecy. Through improper staff planning, inadequate staffing, failure to recognize minimum times necessary to prepare technical and scientific reports (including appraisals and appraisal reviews), and rushes to complete land transactions or exchanges without proper advance scheduling, the BLM invites potential abuses and fails to employ even the weakened resources available to them.

The Foundation Team concluded that there is no appraisal organization within the BLM as such. This lack of factual organization has permitted abuse of the appraisal function. It has led to a virtual disassembling of cohesive appraisal operations except in those states that have overcome the BLM's Washington, D.C. alternative approaches and its failure to provide an appraisal organization.

Foundation Team research did not support the BLM's contention that they have made substantial progress in responding to previous audits by the OIG and the GAO, and their own determination of material weaknesses. These improvements cannot be made until the BLM seriously reorganizes its appraisal organization into a vertical alignment with a strong Washington, D.C. Chief Appraiser, or more appropriately, that such organization occurs at the DOI or elsewhere.

Foundation Team Recommendations

1. We recommend the establishment of a separate agency for the development and review of appraisals for the Federal government as a centralized agency. Alternatively, as a minimum, the DOI should create a centralized appraisal and appraisal review organization for the Department. It is essential that, to assure appraiser independence and to protect the public interest, reorganization must separate the conduct and management of appraisals from that of Realty operations.

2. We recommend that, in reorganization of the appraisal function, mineral, timber, water rights, archaeology, and other specialty appraisals should be included within the new organization.

3. We recommend that, until such time as the appraisal function can be reorganized, an independent *compliance officer for appraisals* be established for the BLM by the DOJ. Functions should include reviews of appraisal function compliance problems brought to their attention and periodic peer review.

4. We recommend that BLM's management team and Realty specialists be educated to recognize the difference between qualified market value opinions and the legal authorities that may exist for determinations of transaction or exchange prices that are not equal to market value. These principles should be carried over into discussions and negotiations with private owners. Legal enforcement should be applied when necessary.

5. We recommend that proponent appraisals be eliminated as a substitute for BLM contract or staff appraisals and appraisal reviews. In complying with the provisions of FLEFA when appraisal costs are paid wholly or partially by a proponent, the BLM should be recognized as the client and require that all applicable laws and standards be met.[33]

6. We recommend that the BLM increase the percentage of appraisals and appraisal reviews that are conducted by staff appraisers. We also recommend that until such time as more comprehensive reorganization of the appraisal function is accomplished, management should focus deployment of appraisers to the development of appraisals and appraisal reviews, and to performing internal consultation regarding appraisal matters.

[33] In this context the term "client" is consistent with the use of the term by financial institutions in meeting fiduciary responsibilities for dealing with federally regulated funds. Under FIRREA a separation is made between an appraisal that might be procured by a prospective borrower, which is not permitted, and a requirement for a borrower to pay for an appraisal procured and used by a financial institution in processing the loan.

Section 4:
Evaluation of BLM's Washington County, Utah Alternative Approach

Alternative Approach Issues and Background

In auditing the BLM's activities, which in part involved the 61,000-acre Red Cliffs Desert Reserve and a habitat conservation plan (HCP) area intended to protect the Mojave desert tortoise, the 2001 OIG report cited particular concerns over "an alternative approach" that was taken by the Washington, D.C. Senior Specialist-Appraisal to "jump start" the land acquisition process. The criticisms continued those referred to in previous reports OIG and GAO reports.

The Foundation Team's analysis and evaluation of the Washington County, Utah alternative approach[34] centers on the "DeMar exchange," which was the only land exchange in a series of dozens of controversial BLM land dealings with private owners near St. George, Utah. We further note that the actions of the BLM in connection with the use of an alternative approach, and actions of the Senior Specialist-Appraisal, extend beyond this exchange to the other Washington County land transactions. Similar BLM actions have been noted in, but are not limited to, Nevada and Utah, including the San Rafael exchange discussed below.

Because the concept of an alternative approach, and the issues and events connected with the Washington County matters, have not been previously well understood, results of the Foundation Team's research are summarized and analyzed below.

Orientation to BLM's Alternative Approach

The "Delegated Authority" approach and the "alternative approach" have distinct differences. Section 1203 of the BLM Manual for its operations has explicit statements of Delegated Authority ranging from the Secretary of the Interior to other leadership positions within the BLM. Further Delegations are included at the BLM's state level to assist in carrying out the responsibilities contained in special or higher authority delegations. Redelegation of authority does not relieve the prime responsibility of one who makes such redelegation. State office and certain other specified authorities are delegated to State

[34] The *alternative approach* is a family of selectively applied BLM procedures associated with controversial and criticized land activities such as those cited by the OIG and the GAO. The procedures are applied as substitutes for market value opinions developed by qualified appraisers under the BLM's purported Delegation of Authority processes.

Directors, who report to the BLM's Director and Deputy Director. The authority of BLM state Chief Appraisers is established at the state level. There is no Section 1203 direct authority for the Senior Specialist-Appraisal.

Authorities relating to basic land matters such as those examined by the Foundation Team flow generally from Washington, D.C. to State Directors. At the time of the DeMar transaction, the BLM's Utah Chief Appraiser was the only person formally authorized by the State Director to conduct appraisal reviews and to make market value recommendations to the State Director. This written authority existed prior to and throughout the term of the DeMar negotiations and completed exchange, and no other such written authority was found to exist.[35] The relationship recognized the responsibility of the Chief Appraiser to meet the technical and legal requirements of the BLM to obtain market value opinions from a qualified appraiser[36] and to recommend only those considered upon qualified review to competently meet applicable standards.

The State Director, in turn, was authorized *to use* a recommended market value opinion, but not to change a properly qualified opinion. Appraisals by "qualified appraisers," and related requirements, were set forth in the 1970 Act[37] and are provided under UASFLA. The 1970 Act also required that, in supporting the Constitution of the United States, private owners be offered not less than fair market value for land acquired by the Federal government. FLPMA in 1976 specified U.S. policy that public lands be retained in Federal ownership except where disposition would "serve the public interest." FLPMA also required fair market value as a basis for valuing public lands and resources. FLEFA provided more uniform rules and regulations pertaining to land appraisals in order to reflect nationally recognized appraisal standards. None of these or other laws suggest that a State Director was authorized to act in the stead of a qualified appraiser or to ignore qualified appraisals of market value.

FLEFA was established to facilitate and expedite land exchanges. It provided particular means by which valuation disputes could be settled, but there is no indication that these processes included a redefinition of the term "value," which in the Federal jurisdiction has been either "fair market value" or

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[35] Interviews with BLM management and the Senior Specialist-Appraisal confirmed these points.

[36] See: UASFLA. Sections A-39, D-1e, D-2, D-7, and D-15; USPAP, Competency Rule.

[37] Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act of 1970.

"market value," considered synonymous.[38] There was specific recognition that, in arriving at market value, nationally recognized appraisal standards were required and that procedures and guidelines for resolving appraisal disputes were needed. The Foundation Team found no type of value other than market value that is specified for use in FLEFA.[39] There are, however, provisions for an exchange price that exceeds market value when a determination is made that the public interest merits such higher price.

The Washington, D.C., Chief, Lands and Realty, and the Senior Specialist-Appraisal explained a connotation of fair market value that they have applied in their application of the alternative approach and have encouraged the BLM staff to apply. Under their concept, they say that market value does not always act "fairly." Thus, in order to be fair to a property owner, they assert that it is necessary to develop a value opinion that is deemed fair in a particular land matter and which exceeds market value. They assert that fair market value therefore differs from market value and can be used for a higher "value" in voluntary land transactions.

FLEFA provides for alternative means of settling appraisal disputes, but notably does not supercede or suspend the requirement of the Federal government to require qualified market value opinions that meet nationally recognized standards. A formal process of data gathering, analysis, reconciliation, and conclusions of defined value is required by such standards. There is an additional requirement for state appraisal licensing or certification in most states and for most Federal government applications. Generally the members of negotiating or bargaining teams do not meet these definitions and requirements or, if they are appraisers, they must function in a capacity that must be established as a non-appraisal role to avoid ethical and/or standards violations. Thus, as with the State Director, individuals or teams that negotiate or bargain prices as a basis for land exchanges must be furnished and consider qualified appraisals, but cannot substitute their own or other non-qualified opinions for them.

In generic form the alternative approach bypasses the Delegation of Authority and operating procedures required by the BLM for developing market value opinions and the approval of such opinions by qualified appraisers prior to

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[38] See UASFLA, §B-2 for a discussion of market value, fair market value, and legal bases for determining that adding the term "fair" does not alter the meaning of market value in the Federal jurisdiction.

[39] If other type of value were intended, serious Constitutional protections of private citizens could arise and the Federal government could also be faced with non-compliance with its own laws and policies with regard to serving the public interest.

management decisions. Instead, a special process for each project is substituted. Examples include processes that do not follow the Delegation of Authority, omit or misapply authorities and responsibilities of state appraisal staff, substitute management decisions or opinions for qualified market value recommendations from authorized qualified review appraisers, and import appraisal or other staff from other states into Delegation of Authority positions without such delegations.

The BLM Deputy Director outlined roles and responsibilities relating to "value determinations" in a 1997 memorandum.[40] Prior to this memorandum he had served as Utah State Director and was familiar with the Washington County matters. In part the memorandum stated:

> While the approved estimate of market value is the beginning point for bargaining or other processes, BLM management is responsible for final value settlements for agency realty transactions...A decision to exchange land at other than the value supported by an approved appraisal must be thoroughly documented and supported in the case file. State Director concurrence is required.
>
> Given the increased complexity of land exchanges the current delegation of authority for appraisals is too restrictive. To allow for sharing of scarce appraisal skills and to facilitate work between states and other agencies, State Director redelegation authority regarding market value approval is revised and expanded to include other qualified federal review appraisers.

The 1997 memorandum also stated:

> ...that final value settlements, i.e., the result of bargaining, or other processes, are acceptable means of determining the values to be used in exchanges. Appraisal professionals can and should advise on appraisal matters involved, but the process and final result of bargaining and other processes is the responsibility of the appropriate management official.

[40] Millenbach, Matt, Deputy Director, BLM. Letter to State Directors: "Roles and Responsibilities Regarding Value Determination for Bureau of Land Management (BLM) Land Exchanges." April 21, 1997.

Washington County Alternative Approach

The Washington County lands were in and/or near a critical habitat area declared for the protection of the Mojave desert tortoise. The BLM's alternative approach to the valuation of the private and Federal lands in question, to their price negotiations, and to the DeMar exchange featured the superimposition of appraisers and review appraisers without standard Delegation of Authority upon the established BLM appraisal organization in Utah. They also involved the determination of a price for the DeMar exchange that relied upon a preliminary value estimate (PVE) that was not approved by a qualified appraiser with formal Delegation of Authority.

Initial controversies over the desert tortoise issues centered upon whether declaration of the tortoise as a threatened or endangered species, and the subsequent designation of specific lands for habitat conservations, constituted a public taking of private rights. The Foundation Team's research found no acknowledgement by the BLM that a taking of private property had occurred, that compensation was due, or that the existence of the desert tortoise factually served as a diminution of market value of the particular lands in question at the time the controversies arose. Instead, the BLM was heavily influenced by the assertions of owners and their representatives, who threatened inverse condemnation or other legal actions.

Unofficial opinions attributed to the BLM's state Chief Appraiser and/or staff were cited as a basis for lack of confidence in the BLM's state appraisal staff and accusations that the appraisers were biased in their views. Several owners apparently asserted that they would not rely upon appraisals in which the BLM's Utah appraisers were involved. It was suggested that the lands be acquired by simply ignoring the influence of the desert tortoise, but a Solicitor's Opinion denied validity of this approach.[41]

Based upon the owner's assertions, and the concurrence of BLM Lands and Realty staff charged with the responsibility of acquiring habitat lands, the BLM determined that an alternative approach should be applied. Working with private property owners, a contract appraiser suggested by an owner was selected to perform a PVE. The appraisal was based upon instructions and

[41] Leshy, John D. United States Department of the Interior. Office of the Solicitor. Letter to Mr. Steve Snow citing UASFLA and stating *inter alia*: "We have found no way within the existing statutory framework to justify an exception that would ignore assessing the effect of the Endangered Species Act in making the fair market value determination. That is, as we see it, the federal government is precluded by law from paying a value for land that does not reflect the market's estimate of how that land can be used. Thus, it would not be permissible to ignore the fact that the Desert tortoise has been listed as an endangered species and that the listing might constrain some uses of land." Washington, D.C. September 19, 1993.

hypothetical conditions that were agreed to by the owner and the BLM, but were only appropriate for feasibility studies to determine the advisability of an exchange rather than the processes for final market value determinations.[42]

Contracting for the PVE was performed jointly, but involved a review appraiser from another state who was brought in for the special purpose of administering and reviewing the contractor's appraisals. The Senior Specialist-Appraisal apparently oversaw the appraisal processes. This arrangement bypassed the Delegation of Authority processes and, while approved by the State Director, was conducted without written authority.[43] It was intended by those who participated in the alternative approach that the contract appraiser's PVE would be used as the basis for an acquisition of private property by the BLM.

Foundation Team research indicates that prior to the BLM's agreement to engage the contract appraiser, the appraiser indicated an even higher market value for the DeMar property than first reported to the BLM under the joint contract. After review by the imported reviewer the PVE was reduced further and then approved by the imported reviewer as though it were a complete appraisal. This PVE, and others prepared by the contract appraiser and reviewed by the imported review appraiser, were reportedly reviewed by the Senior Specialist-Appraisal who made recommendations to the State Director.

These processes were originally undertaken under the premise that the BLM would purchase the privately owned land. When this became infeasible, a partial acquisition and exchange was considered as a substitute. Using the BLM state appraisers and the existing Delegation of Authority, a second contract appraiser was engaged and his market value appraisal, which was not based upon hypothetical conditions or special instructions, was approved and recommended to the State Director by the Chief Appraiser for action.

In an apparent effort to settle the seven fold difference between the PVE and the Chief Appraiser's approved appraisal, both appraisals were submitted to the DOJ for review. Their review indicated that neither complied with all standards, but that the PVE estimate had the more serious failings. The DOJ review was based upon prima facia appearance of the PVE that it was a

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[42] A copy of the instructions and hypothetical conditions was furnished for Foundation Team review.

[43] Several of the BLM management and Realty staff recalled specific details of the involvement of the Senior Specialist in the DeMar exchange. The Senior Specialist denied any such involvement. The records that include the appraisals and most of the review appraisals involved are missing from the BLM files and no replacements could be found.

complete appraisal. Interviews with the appraiser and with BLM management determined that the appraisal was a PVE, and that this was known to BLM land exchange staff at the time. Thus, this information indicates that the appraisal should not have been reviewed by the out of state appraiser as though it were a complete appraisal, and should not have been submitted to the bargaining team.[44]

Recognizing that the lower appraisal, although in compliance with Delegation of Authority processes, would not be acceptable to the property owners, and that neither appraisal met all standards requirements, representatives of the State Director submitted both appraisals to a bargaining team.[45] This continuation of the alternative approach avoided explicit final acceptance or rejection of either of the two appraisals, leaving the bargaining team to treat them as if they were both qualifying appraisals. This provided opportunity for substitution of a bargaining team "verdict" rather than reliance upon one or more appraisals, even if at least one of the reports they relied upon should not have been presented or relied upon.

The determination by DOJ that both appraisals contained serious defects and did not comply with UASFLA standards was apparently known to at least part of the bargaining team. The bargaining team's lead was the BLM's District Manager for the lands in Washington County, who was reportedly fully familiar with the property owner's claims, the political pressures, and the BLM's intent to close the exchange at a price that was acceptable to the owners. He apparently was told about the results of the DOJ appraisal review prior to the deliberations of the bargaining team.

The bargaining team decided to use portions of each appraisal to develop their opinion. Heaviest weight was given to the PVE and was time-adjusted upwards using data from the lower appraisal estimate. There is no evidence that the bargaining team sought objective professional staff appraiser advice,

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[44] Because the Foundation Team was not provided the appraisal with a PVE, we were unable to verify its details. However, interviews and related file evidence indicate that the format of the appraisal was misleading and not understood by the DOJ review appraiser or the State of Utah, to whom the report was referred for possible disciplinary action. Our research indicates that it was probable that those involved in BLM decision processes knew the status of the appraisal as a PVE, and that at least some participated in preparation of or suggesting "instructions" and hypothetical conditions upon which it was based. We were told that the Senior Specialist-Appraisal was a participant in these activities, but only anecdotal evidence was found.

[45] As an intervening step the BLM decided to make a formal offer to the property owners to acquire the property at the lower appraised amount recognizing that the offer would be rejected, but using this step to provide a basis for negotiation and bargaining. The owners were advised of this procedure and rejected the offer.

but they apparently did engage in dialog with management and land specialists. We were told that the Senior Specialist-Appraisal was consulted as well. The team concluded a value that was more than seven times the market value opinion approved by the BLM's Utah Chief Appraiser. Their "value" was accepted by the property owners and the exchange was closed in June 1996.

Subsequent Washington County Alternative Approaches

The DeMar exchange established a precedent for other land transactions in Washington County. Applying the market value implications of the DeMar exchange, a series of transactions have been completed since DeMar, continuing to use the services of the Senior Specialist-Appraisal as a surrogate Utah Chief Appraiser and generally bypassing the BLM's state appraisal staff. No other transactions have required arbitration, bargaining, or other form of alternative dispute resolution.

The Foundation Team was told by the Senior Specialist-Appraisal that he was granted a written Delegation of Authority in about 1999, but no copy was furnished for our review. In 1998, the BLM's Delegation of Authority was revised and changes to the BLM Manual 9310 were made in 1999, presumably to better provide for an organization that would not rely upon alternative approaches. The new Manual provided a process of redelegations of authority by those who had received primary authority, but did not include a Delegation of Authority for the Senior Specialist-Appraisals in Utah or elsewhere.

Thus, continuation of the alternative approach was applied to the remainder of the Washington County properties involved in the original appraisers PVE opinions, and reportedly was extended to other properties in Utah as well. Subsequent appraisal reviews by the Senior Specialist were not entirely supportive of the PVE opinions, but to the best of our knowledge did not distinguish them from the complete appraisals for which they substituted.

Other Examples of the Alternative Approach

Foundation Team interviews revealed that a number of the BLM staff observe that when BLM Washington, D.C. management staff and/or higher authority within the BLM or the DOI are involved in land transactions or exchanges, the most serious controversies and applications of the alternative approach are likely to be found. We noted their involvement in each of the controversial cases involved in our studies. This is an apparent reflection of the effects of alternative approach applications.

Examples of such problems reflected in other Nevada and Utah land matters are particularly reflected in the BLM's proposed San Rafael exchange in Utah and land dealings with the State of Utah that preceded this proposal. Each contains elements of the alternative approach as explained earlier, as well as political pressures for the Federal government to act through the BLM in ways that provide opportunities for abuses and failures of fiduciary responsibilities.

Evaluation of Alternative Approaches and Senior Specialist Actions

Although considerable criticism has been leveled upon the BLM's staff appraisers in Utah and the Senior Specialist-Appraisal, Foundation Team research indicates that the alternative approach is a management practice in which requirements for recommended market value opinions from qualified appraisers are bypassed in favor of other practices. This apparently occurs when management and/or specialists believe that appraisal numbers will be too low to satisfy private owners, jeopardizing the potential to complete a land transaction or exchange. Alternative approaches have been participated in and encouraged by the Senior Specialist-Appraisal, but the recent San Rafael exchange proposal demonstrates that they may also proceed without his full cooperation and approval.

In each of the alternative approaches reviewed, one or more management personnel offered rationales for applying an alternative approach. However, the Foundation Team was unable to reconcile their explanations with our understandings of the requirements of laws, standards, or the BLM's established procedures.

State Directors play a key role in the alternative approach, but vacancies and changeovers in office indicate that alternative approaches only succeed with Washington, D.C. approval and/or sponsorship. Many of the interviews indicated that there is an inconsistent practice of the BLM in the establishment of State Directors. The most common explanation was, "It is a political appointment."

Those interviewed rated State Directors at various levels of competency, but in many instances their relationship to Washington BLM management, or that of the DOI, was considered to be a stronger influence on their selection than the requirements for program compliance with applicable laws at the state level. Although this opinion was not universal, it characterized those states where publicity regarding questionable BLM activities, and OIG or GAO oversight evaluations indicated particular problems existed.

Although State Directors have been granted authority for accepting or rejecting a market value recommendation from the State Chief Appraiser,

State Directors are not required to have appraisal expertise or training. At least in recent years they apparently have not had appraisal credentials to permit them to meet the requirements of a "qualified appraiser." Hence, their authority is for approvals, not the obligation to meet legal requirements if they were to develop market value opinions.

Given this perspective, it is clear that an authority that one does not possess cannot be redelegated to another even though the Delegation of Authority procedures granted redelegation authority to the State Director for certain functions. Only a qualified appraiser with proper authority can develop a market value opinion, not just someone who has been asked by management to do so.

By extension, this principle also applies to the work of Lands and Realty teams, exchange team members, negotiators, arbitrators, and bargaining team members. Authority granted by FLEFA expanded the opportunity to settle market value disputes, but *does not change the process by which market value is to be determined or grant new authority to develop qualified market value opinions*. The law provides some limits on ranges of latitude that are offered to management in settling disputes, but the intent of dispute resolution does not appear to be for non-appraisal qualified staff to develop new market value appraisals outside the authorized processes. Instead, it is a means of settling differences of opinion among qualified appraisers regarding market value and making recommendations within the latitude provided by law.

It is the opinion of the Foundation Team that the alternative approach in its various forms does not assure that market value principles that are a part of the law can be met. We agree with the Senior Specialist-Appraisal's assessment, and the concurrence of the OIG, that without adequate management controls in the procurement and administration of qualified appraisals, the wall preventing fraud, waste, and abuse will have been weakened.

It appears that some of the Senior Specialist-Appraisal's appraisal recommendations were not in compliance with applicable appraisal standards. It further appears that his actions in connection with the alternative approach went beyond the limits permitted to protect his independence from the outcome of appraisals in which he was involved, and may constitute further departure from the standards requirements.[46]

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[46] Determination of the possibility of specific infractions of appraisal standards by the Senior Specialist-Appraisal was beyond the scope of the Foundation's contract. Even had we attempted to reach conclusions, the absence of BLM records that would have been used in such evaluations was a constraint on our studies. However, anecdotal evidence and information from the various sources we consulted indicate that more

Based upon file evidences, interviews with BLM personnel including the Senior Specialist-Appraisal, and positions expressed in his writings, it is the opinion of the Foundation Team that the Senior Specialist-Appraisal exhibited bias with regard to application of appraisal standards and the operation of the BLM's appraisal function in his Washington County, Utah conduct previously commented upon by the OIG. It appears that this bias extends to his involvement with the appraisal function of the BLM in matters in Utah and other states. These actions have resulted in a circumvention or misapplication of USPAP and UASFLA standards. They raise questions of the propriety and legality of broader BLM practices that should be more fully examined by the DOJ or other authority with more time and resources than those that have made available to the Foundation.

It is also concluded that problems involving the BLM's appraisal function, which feature the alternative approach, are not attributable solely or primarily to the Senior Specialist-Appraisal. They are attributable to BLM's management and to the form and nature of their organization. The fact that the Senior Specialist-Appraisal has no line authority as such, is only sent to states to apply alternative approach when directed by management to do so, and has apparently not been redirected by management even after OIG findings, is an indication of management's approval of the actions taken.

Foundation Team Recommendations

Recommendations for the principal written guidance and general appraisal function improvements by the BLM are contained in previous sections. However, the following additional recommendations are based upon our reviews of the Washington County, Utah matters:

1. We recommend that all claims of misconduct by BLM staff that have been brought to the BLM's attention by previous OIG and GAO audits, and the details of our evaluations, be referred to the DOJ for comprehensive investigation and appropriate action. This should include, as a minimum, review of all matters relating to BLM's conduct and management of the appraisal function, and the appraisals and appraisal reviews involved in noted land exchanges.

2. We recommend that more in depth analysis of Material Weaknesses noted by BLM's internal peer reviews be included in the DOJ investigation. The Foundation Team concluded that more in-depth

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complete objective analysis outside of the DOI is warranted once more complete data are available.

analysis of these situations is sorely needed because of seriousness of Material Weakness outcomes, the time period over which they have continued to occur, and the BLM's inadequate response to corrections.

3. We recommend that investigations of BLM's alternative approaches specifically include all transactions and exchanges in Washington County, Utah associated with desert tortoise habitat issues and other transactions and exchanges that have been conducted with the State of Utah through its SITLA or other state entities. These matters have applied alternative approaches that raise serious questions regarding compliance with law.

4. We recommended reorganization of the Federal government's appraisal activities as discussed in Section 3. The Foundation's work scope does not extend to a total evaluation of the BLM, but it became clear to the Foundation Team that certain land matters have had special involvement by high level government and agency officials beyond the project level. It is recommended that if the BLM is to see improvements in its conduct and management of the appraisal function, some form of reorganization, reorientation, or other reemphasis of the appraisal function be undertaken throughout the DOI and its various agencies regardless of the greater extent of appraisal reorganization.

5. We recommend that the previously recommended moratorium on BLM land exchanges be implemented immediately and prior to the completion of the proposed San Rafael exchange. This moratorium should continue until completion of a comprehensive overhaul of the appraisal function, elimination of alternative approaches, and improvements in BLM Realty staff understanding of market value and its role in land transactions, including exchanges.

6. We recommend that future revisions of laws and regulations recognize that processes beginning with an offer of market value by Federal agencies, and then negotiating upwards in price, encourage controversy and abuse unless limits are placed on the range of upwards variance and related justifications. The justification for any such variance should be clearly explained, justified, and capable of proof that it is in the public interest of the United States. The processes of documentation and justification should not be deferred until final exchange decisions are necessary, but should be requisites for earlier stages of land exchanges.

7. We recommend that the Delegation of Authority to State Directors, and any redelegations that occur as a result, be clarified to distinguish between non-appraisal staff responsibilities and authority, and that of qualified appraisers. Written guidance necessitates clarification of the role played by those who develop or appraisal review opinions as qualified appraisers and those who apply management and specialist functions in the use of such opinions and decisions based upon them.

8. We recommend that the BLM Manual 9310 and the Exchange Handbook be rewritten to accomplish the preceding recommendation. Additionally, we recommend revision of the Manual 9310 to eliminate confusion and misleading statements.

9. We recommend that the BLM take such corrective action as more detailed independent analysis may indicate is warranted with regard to the actions of the Senior Specialist-Appraisal in the Washington County alternative approach. The Foundation Team is of the opinion that he was strongly supportive of the processes applied by management and the rationale upon which they were based. Available information indicates that, to the extent that he provided appraisal reviews and influenced the development of market value opinions, these actions failed to meet the requirements of USPAP and UASFLA.

10. We recommend that the Senior Specialist-Appraisal not be permitted operational authority or responsibility beyond the Washington, D.C. office, including eliminations of redelegations of authority by State Directors under current Delegation of Authority provisions. We recommend that the standards, authorities, processes, and professional requirements of State Chief Appraisers be supported by management and that appraisal processes be completed without interference by management, or potential loss of independence, such as that associated with alternative approaches.

11. We recommend that the BLM refer all appraisals and appraisal reviews that have been developed for the land exchanges and proposed land exchanges noted above to the appropriate state agencies and professional organizations for evaluation of standards compliance. These should include those involved in previous reviews undertaken within the DOI. We question whether they have included sufficient peer review to determine standards compliance. We further recommend that the BLM take appropriate action on any

determinations of standards or other violations involving contract or staff appraisers, or staff misconduct on the part of non-appraisers.

EXHIBITS

Exhibit A:
Abbreviations and Foundation Team Interviews

Acronyms Used in the Report

ASB	Appraisal Standards Board
AQB	Appraiser Qualifications Board
BLM	Bureau of Land Management
CFR	Code of Federal Regulations
COR	Contracting Officer's Representative
DOI	Department of Interior
DOJ	Department of Justice
FIRREA	Financial Institutions Reform Recovery and Reform Act
FLEFA	Federal Land Exchange Facilitation Act
FLPMA	Federal Land Policy Management Act
GAO	General Accounting Office
OIG	Office of the Inspector General
PVE	Preliminary Value Estimate
SITLA	School and Institutional Trust Lands Administration (State of Utah)
UASFLA	*Uniform Appraisal Standards for Federal Land Acquisitions*
U.S.C.	US Code
USDA	United States Department of Agriculture
USFS	U.S. Forest Service
USPAP	*Uniform Standards of Professional Appraisal Practice*

Interviewers and Interviewees

Foundation Team interviews included:

- Washington, D.C. BLM management, Lands and Realty, and Appraisals
- BLM State management, Lands and Realty specialists, and appraisal staff
- Land owners and contract appraisers
- Former BLM employees
- OIG staff

BLM organization interviews and team members conducting the interviews were:

Andrew P. Brorsen
- Colorado
- Nevada
- New Mexico
- Oregon

John D. Dorchester, Jr. (Team Leader)
- Arizona
- Colorado
- Washington, D.C.
- Utah

Jerald Kjerstad
- California
- Colorado
- Idaho
- Utah

Henry A. Long, Jr.
- California
- Colorado

Exhibit B:
Glossary of Terms

Administrative Review
For the purposes of this report, a review of an appraisal without making a judgment on the quality of the appraisal as in a Standard 3 appraisal review under USPAP.

Appraisal
As defined in USPAP, "the act or process of developing an opinion of value." [47]

Appraisal Report
A written report stating an appraiser's official opinion of value as prepared under Standards Rule 10-2(a).

Appraisal Review
Performed under Standard 3 of USPAP, when an appraiser acting as a reviewer develops and reports a credible opinion as to the quality of another appraisers work. (Also referred to as "review appraisal.")

Area Wide Appraisal
An appraisal usually associated with the concept of a Mass Appraisal in which large parcels of land are appraised in one group. See also concept of the Larger Parcel, defined under "Parcel" for differences.

BLM 9310 Manual
The internal manual used by BLM staff for the appraisal of public lands at market value.

BLM Land Exchange Handbook (H-2200-1)
The internal document used by BLM staff in the processing of land exchanges. Much of the document is based on regulations contained in 43 CFR 2200.

Complete Appraisal
An opinion of value developed without invoking the Departure Rule of USPAP.

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[47] The Appraisal Foundation. Uniform Standards of Professional Appraisal Practice, 2002. Washington, D.C. 2002. (USPAP 2002)

Contracting Officer's Representative
For the purposes of this report, the individual who served as the lead liaison between the BLM and The Appraisal Foundation.

Contract Appraiser
For the purposes of this report, appraisers not currently employed by the BLM that are hired on a contract basis to perform appraisals.

Delegation of Authority
As outlined in BLM Manual 1203, internal instructions that specify the level for decision making authority in BLM activities.

Fair Market Value
Another way of referring to "market value." As defined in UASFLA, "Market Value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller and a reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal."[48]

Fee Appraisers
Private sector appraisers who are paid a fee for their appraisal services.

Highest and Best Use
As stated in the Glossary of USPAP, "In appraising real property: The reasonably probable and legal use of property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value."[49]

Land Acquisition
The acquisition by a government agency (in this case the BLM) of land in the public interest and consistent with publicly-approved land use plans.

Land Exchange
A real estate transaction where the sale and purchase of land are combined in the same transaction or a series of transactions.

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[48] Interagency Land Acquisition Conference. Uniform Appraisal Standards for Federal Land Acquisitions. Washington, DC. 2000.

[49] USPAP 2002. p. 218.

Lands and Realty
A division within the Bureau of Land Management, Department of Interior that specifically handles any cases regarding acquisitions or exchanges of government land.

Jurisdictional Exception
As defined in USPAP, "an assignment condition that voids the force of a part or parts of USPAP, when compliance with part or parts of USPAP is contrary to law or public policy applicable to the assignment."[50]

Material Weakness
Term coined by the BLM indicating that "adequate management oversight and direction has placed BLM's appraisal staff in the role of both appraising the market value and setting transaction prices with little management accountability resulting in deteriorating compliance with laws, regulations, manuals, and standards."

Market Value
See definition of "Fair Market Value," above.

Parcels
For the purposes of this report, the portions of land appraised in a land acquisition or exchange procedure. Under UASFLA[51] a "larger parcel" is defined as a tract, or tracts, of land possessing a unity of ownership and having the same, or an integrated, highest and best use.

Preliminary Value Estimate (PVE)
A preliminary report, which sets for an initial estimate of the value or range of values for which specific lands would likely sell or lease. The report should state that the estimate is preliminary, subject to change once a complete appraisal is performed.[52]

Proponent
Landowners working with a government agency on an acquisition or exchange.

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[50] USPAP 2002. p. 3.

[51] Interagency Task Force. Uniform Appraisal Standards for Federal Land Acquisitions. Washington, D.C. 2000.

[52] United States Department of Interior. Bureau of Land Management. Manual 9310-Appraisal of Real Property. Washington, DC. October 27, 1999.

Staff Appraisers
For the purposes of this report, appraisers that are currently employed by the BLM.

Standard 3, USPAP
The Standard in the Uniform Standards of Professional Appraisal Practice (USPAP) that refers to appraisal review, development and reporting. Standard 3 of USPAP states, "In performing an appraisal review assignment involving a real property or personal property appraisal, an appraiser acting as a reviewer must develop and report a credible opinion as to the quality of another appraiser's work and must clearly disclose the scope of work performed in the assignment."[53]

State Certified Appraiser
An appraiser issued a certification by a state real estate appraisal board for meeting specific minimum criteria as established by the Appraiser Qualifications Board (AQB) of The Appraisal Foundation.

Statement of Value
A written report prepared by a qualified appraiser stating his/her conclusion of value.

State Licensed Appraiser
An appraiser issued a license by a state real estate appraisal board for meeting specific minimum criteria as established by the Appraiser Qualifications Board (AQB) of The Appraisal Foundation.

Title XI, FIRREA
Title XI is the *Real Estate Appraisal Reform Amendments* of the Financial Institutions Reform Recovery and Enforcement Act. It was implemented to protect Federal and public interests by requiring that all real estate appraisals for federally related transactions are prepared according to established uniform standards. The Appraisal Subcommittee and the entire state appraiser regulatory system were established under Title XI. In addition, under Title XI, the independent Board of The Appraisal Foundation (the Appraiser Qualifications Board and the Appraisal Standards Board) was given significant responsibilities in terms of qualifications and standards for state licensed and certified appraisers.

[53] USPAP 2002. p. 32.

Tract
In general usage, a contiguous land area in common ownership that is generally larger than a lot and is physically capable of being divided into lots or parcels.

Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)
Standards for appraisals and appraisal reviews in the Federal jurisdiction established by the Interagency Task Force.

Uniform Standards of Professional Appraisal Practice (USPAP)
Statements of standards of generally accepted appraisal principles established by the Appraisal Standards Board of The Appraisal Foundation.

Importance of Standards

Real property appraisals and appraisal reviews have been an important business function and crucial contributor to our nation's economic well being since at least the early portions of the Twentieth Century. Abuses in financial transactions and issues of consumer confidence in markets led to major reforms in the concepts of appraisals and the development of the appraisal profession as early as the 1930s. As explained below, the public dependence upon credible and reliable appraisals issued by professional appraisals is reflected in many ways. Examples include property takings under the Fifth Amendment to the Constitution of the United States, the stewardship of our nation's real property resources by the federal government, the fairness and legality of transactions between private interests and our governments at all levels, fair lending activities, market transactions of many kinds, and others.

Appraisers and the appraisal review function frequently serve as a lightning rod when controversies involving real estate arise. The Appraisal Foundation was created to aid in federal financial reforms at a time of such controversy and concern for protection of the nation's resources. Subsequently, the Foundation was instrumental in development of national appraisal standards that are enforced by the states and territories of the U.S. under operation of Federal and state laws. USPAP is recognized as domestic standards that conform to international standards as well.

"Pressures" on appraisers, review appraisers, and the appraisal function are common and are to be expected because of the volume of dollars involved in real estate related transactions throughout our economy. They are a major reason why a combination of laws and appraisal standards has been created to protect the public interest. Any failure to uphold and apply these standards creates a weakness in the nation's economic system and may constitute a violation of the law. The same is true for UASFLA, which constitute supplemental standards to USPAP and have special rules for the Federal jurisdiction.

The real estate appraisal profession is founded upon economic principles rooted in "the science of economics." This provides professional appraisers with a basis for research, development of market evidence, application of uniform methods of analysis, and reconciliations of reasoned conclusions. The "valuation process" is a systematic format for applying generally accepted principles and practices to factual market situations, and is required for all appraisals. Market value is the most common type of value estimated and is

the cornerstone for most real estate transactions, whether in the private or public sector.[54]

To accomplish professional and public needs, appraisers must work within a framework of independence, objectivity, freedom of bias, and application of generally accepted appraisal principles. As professionals, appraisers are also held to account for maintaining a high ethical conduct. Failure to meet ethical requirements can also result in legal sanctions as well as forfeiture of the right to practice as an appraiser.

The statement "appraising is neither an art nor a science" is, unfortunately, a commonly used subterfuge for those who would ignore or abuse the importance of credible and reliable appraisals. Professional appraisals and appraisal reviews are a mainstream element of financial decisions worldwide and are a requisite for most significant decisions involving real estate. It matters not whether appraisals are an art or a science—they are necessities if the public trust is to be upheld and our nations' and our citizen's economic climate is to be protected. When performed by competent professionals under existing standards, appraisals are reliable and dependable bases for making and implementing economic decisions, and for evaluating them when necessary.

Uniform Standards of Professional Appraisal Practice

USPAP reflects the generally accepted and recognized standards of appraisal practice in the United States.[55] The Appraisal Foundation was authorized by Congress as the source of appraisal standards and appraiser qualifications in 1989 pursuant to provisions of Title IX, FIRREA.[56] The Foundation's Appraisal Standards Board (ASB) was established in 1989. It unanimously approved and adopted the original USPAP that preceded the establishment of the Foundation, but which was copyrighted by the Foundation in 1987.

Since the development of USPAP, new and revised standards, clarifications, interpretations, explanations, or elaborations of USPAP and the addition of advisory opinions have been published on an annual basis. Appraisers throughout the United States have been active in attending USPAP courses and seminars. All States have continuing education requirements for appraisers to attend standards courses and seminars for licensing and

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[54] Market value is defined (location) of the Foundation's report.

[55] Acknowledged by Interagency Land Acquisition Conference, Lois J. Schiffer, Chair. Uniform Appraisal Standards for Federal Land Acquisitions. Washington, D.C. December 20, 2000.

[56] P.L. 101-73, 103 Stat. 183, 511 (Aug 9, 1989).

certification. Most of the major appraisal organizations have even more substantial requirements for appraisers to attend courses and seminars on USPAP and Ethics.

The ASB develops, publishes, interprets, and amends USPAP on behalf of appraisers and users of appraisal services. As stated in the USPAP 2002 Edition:

> ...because USPAP will be used by state and federal regulatory agencies and others, ASB has adopted a publication policy to ensure that all interested parties are informed of interpretations of or amendments to USPAP in a regular and timely manner.

Uniform Standards for Federal Land Acquisitions

Additional appraisal standards apply within the federal jurisdiction. UASFLA (known as the "Yellow Book") serves as supplemental standards to USPAP. In certain respects they also constitute a *jurisdictional exception* to USPAP covered under USPAP's Jurisdictional Exception Rule. This rule states:

> If any part of these standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction.[57]

An important and frequently overlooked component of UASFLA 2000 is the definition of market value. Market value is the particular type of value that is the subject of most appraisals performed for the federal government, particularly those for the BLM. For such appraisals, UASFLA directs that the following definition "shall" be applied:

> Market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.[58]

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[57] USPAP 2002. p. 13.

[58] UASFLA 2000. p. 13.

Understanding Appraisal Standards

USPAP and UASFLA have explicit standards, guidelines, and commentary to provide appraisers, users of appraisal services, and the public at large a basis to promote and maintain a high level of public trust in professional appraisal practice. Included in this practice are those who perform appraisal, appraisal review, and appraisal consulting, as defined in USPAP. Originally published in 1971, UASFLA was last revised in 2000 in its fifth edition. As stated in the 2000 Edition, "They (UASFLA) are frequently cited by Congress in legislation relating to the valuation of federal land acquisitions and have guided the appraisal process in these maters since their original issuance by the Interagency Land Acquisition Conference." The Conference includes more than 30 agencies and entities of the federal government, including the BLM.

UASFLA 2000 states the policy of the United States with regard to acquisitions of real property as follows:

> In acquiring real property, or any interest therein, it is United States' policy to impartially protect the interests of all concerned. The Fifth Amendment of the United States Constitution asserts: "nor shall private property be taken for public use, without just compensation." Since "the courts early adopted, and have retained, the concept of market value"[59] as the measure of just compensation, the United States, as a matter of general policy, bases its land acquisitions on market value appraisals: "[I]t is the duty of the state, in the conduct of the inquest by which the compensation is ascertained, to see that it is just, not merely to the individual whose property is taken, but to the public which is to pay for it."[60]

The intention of UASFLA is that it establish generally accepted appraisal principles for the federal jurisdiction as an extension of USPAP, to be applied in all types of land transactions involving the U.S. Its "Purpose" states:

> These standards have been prepared for use by appraisers to promote uniformity in the appraisal of real property among the various agencies acquiring property on behalf of the United States. It should make no difference to the landowner, whose property is being acquired, which agency is acquiring the land, or what method of acquisition it uses.

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[59] UASFLA 2000, citing United States v. Miller, 317 U.S. 369, 374 (1943).

[60] UASFLA 2000, citing Searl v. School District, Lake County, 133 U.S. 553, 562 (1890); Bauman v. Ross, 167 U.S. 548, 574 (1897).

The "Purpose" continues by pointing out that the rules stated in UASFLA are subject to modification under the varying circumstances of particular agency programs or cases. The following is a quote from the footnote:

> Many of the land acquisitions agencies have adopted appraisal and/or review handbooks or manuals which, in some instances, modify these Standards to meet their specific acquisition programs. Examples of such manuals/handbooks include U.S. Fish and Wildlife Service (342 FW 1, Appraisal Handbook; 342 FW2, Appraisal Review Handbook); U.S. Army Corps of Engineers Real Estate Engineer Regulations (ER 40-5-1-12); Bureau of Land Management Manual 9310.

One of the functions of UASFLA is to establish data documentation and appraisal reporting standards. They state:

> **Introduction.** Appraisal preparation, documentation and reporting shall be in conformity with these Standards, which are compatible with standards and practices of both the appraisal industry and the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) It has been necessary, however, to invoke USPAP's Jurisdictional Exception Rule in certain instances, so as to conform, these Standards with overriding federal law relating to the valuation of real estate for government acquisition purposes. Appraisals prepared in accordance with these Standards will be considered for the purposes of these Standards to constitute a *complete* appraisal, as defined by USPAP.
>
> It should be recognized that the government's needs for private property for public purposes are quite varied and have a tendency to create unique valuation problems. These Standards do not cover all of the valuation problems that might be encountered in the appraisal of property for government acquisition, and so should not be considered as rigid rules which must be applied in every instance.
>
> The appraiser may sometimes encounter unique appraisal problems that require modification of the appraisal process and the appraisal report to ensure that the specific appraisal problem is adequately addressed and that the appraiser's final conclusion of value is accurate, and has been developed in accordance with controlling federal law. With written agency concurrence, appraisers should feel free to deviate from the Standards in those unique cases that require deviation to properly solve appraisal problems so long as such deviation is in

> accord with federal law and can be adequately justified. Such justification must be included in the appraisal report.[61]

UASFLA continues by emphasizing that an appraiser should recognize that if these Standards are modified by an agency or program manager for the reasons noted in the Standards, the appraiser's assignment may result in a *limited* appraisal as defined by USPAP and the appraiser should identify the appraisal as such. Under no circumstances, however, may appraisal standard be set at a level below the minimum required under 49 C.F.R. 23,103.

These Standards emphasize that USPAP provides for three types of appraisal reports: self-contained, summary, and restricted use and the appraiser is required to specifically identify the type of appraisal report prepared. These Standards continue with "For a number of reasons, the *restricted use report*, as defined by USPAP, is unacceptable for government land acquisition purposes." In the footnotes the following statement is found:

> E.g., a restricted use report cannot reliably be reviewed, as is required for government land acquisition appraisals, due to the limited information provided (USPAP Advisory Opinion 12), a condition that cannot be met for government land acquisition appraisals because it should be anticipated that others, such as a land owner, legislator, or the court, will be asked to use and rely on the appraisal report.

In summary, USPAP, UASFLA, and BLM 9310 Manual provide the appraisal and review standards to be followed by BLM staff and contract appraisers and review appraisers. UASFLA 2000 provides extraordinary detail and direction on the appraisal and review process to assure compliance with USPAP, federal law, and federal policy.

Ethics in Appraising

In the past, codes of ethics for appraisers were developed by various professional appraisal organizations. These codes and their enforcement were similar, but only those appraisers who were members of these professional organizations were subject to enforcement of their codes. However, with the adoption of USPAP, the ethical obligations of appraisers have been uniformly expressed by the Foundation and are enforced through the states. The roles of appraisers and review appraisers continue to be elevated in importance, placing ethical obligations on those who serve in this capacity. USPAP's *Ethics Rule* addresses appraiser and review appraiser conduct by *requiring*:

[61] UASFLA 2000. Section A.

- In appraisal practice, an appraiser must not perform as an advocate for any party or issue.

- An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

- An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

- An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, material status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.[62]

Appraisers must avoid advocacy and the appearance of advocacy. This mandate and its importance to the public are frequently overlooked and/or misunderstood. Without relevant, reliable, and objective appraisals and appraisal reviews individual clients may gain in a given transaction, but the public, the economy, and our society are the losers. As reflected by historical events, in time even the client who repeats in unfair or biased appraisals or appraisal reviews will lose because of the effects of unethical and improper practices upon markets, market confidence, and economic stability. Meanwhile, others are left to suffer an avoidable disadvantage because of fraudulent or misleading practices.

It is widely recognized that client or other pressures may be placed upon appraisers to be an advocate for the client or other interests including their own. However, USPAP standards and Ethical Rules establish a framework in which these pressures must be understood by professional appraisers and their effects professionally avoided so that objective, unbiased, and reliable appraisals and appraisal reviews result. The appraiser must make it clear when he/she accepts the assignment that the employment and/or the appraisal fee are in no way contingent on the conclusions or on any settlement or award. Further, USPAP establishes special Rules for professional competency and for the conduct of all assignments that fall within the jurisdiction of USPAP. In particular, the Departure Rule provides for departures from the standards only

[62] USPAP 2002. Ethics Rule.

where such departures are permitted, and then permits such departures under carefully controlled procedures.

The appraiser must also be careful to avoid what may be termed "reverse advocacy." Appraisers who prepare appraisal reports for agencies acquiring, exchanging, or disposing of property often respond to questions about a specific adjustment, analysis, or conclusion by saying, "I gave the property owner the benefit of the doubt." It is the role of the professional appraiser or review appraiser to neither favor nor disfavor any "side" in an appraisal. It is the duty of such appraisers to promote and maintain a high level of public trust in professional appraisal practice, to develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading, and to comply with the standards.[63]

[63] USPAP 2002. Preamble.

Exhibit D:
Written BLM Guidance

Overview

The Foundation Team found that many of those interviewed cited the existence of laws, regulations, handbooks, and manuals as BLM written guidance. However, some had little specific understanding of such guidance. Absence of knowledge of the existence of state-level guidance or instruction for the appraisal function was common.

This Exhibit contains a brief summary of selected BLM written guidance related to the appraisal function, but does not purport to provide complete explanations or comprehensive coverage. It is intended as a supplement to aid those who may not be familiar with the guidance and a reminder for those who are familiar with them.

Principal Laws – BLM Appraisal Function

The United States established relocation assistance programs for Federal real estate acquisitions in 1970.[64] Policies were set forth for interactions between the Federal government and private property owners. This Act establishes a basic framework for BLM's land programs. In 1976 further legislation was passed to set additional policies, standards, and procedures for the management of Federal lands.[65] Among the 1976 Act's provisions were procedures for the conduct of Federal land exchanges.

A 1989 Act[66] responded to severe problems in the nation's banking and savings and loan systems and, among other reform and recovery actions, provided for establishment of The Appraisal Foundation and national appraisal standards. Appraisal standards were in existence at the time in the private sector and were only enforceable through professional appraisal organizations. Uniform standards also existed in the Federal jurisdiction (UASFLA), a common agreement among Federal agencies based upon generally accepted appraisal standards and special Federal requirements.

In 1988 enhanced the ability of the Federal government to facilitate land exchanges. FLEFA provided for a number of ways to resolve disputes over market value. However, it did not change the government's reliance upon previous laws regarding appraiser's responsibilities, appraiser qualifications,

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[64] Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

[65] Public Law 94-579, The Federal Land Policy and Management Act of 1976.

[66] FIRREA.

appraisal standards, market value concepts, or non-appraiser Federal employee's use of market value opinions by qualified appraisers. The wording and interpretations of this Act have resulted in considerable controversy. A more detailed discussion of important BLM guidance follows.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

Title III, *Uniform Real Property Acquisition Policy*, established uniform and equitable land acquisitions policies for Federal and federally assisted programs. It requires heads of the Federal Agency to acquire real property expeditiously by negotiation. Prior to initiation of any negotiations, the real property is to be appraised (with exceptions for acquisition by sale or donation of property with low fair market value). Federal Agency heads are directed to establish an amount of "just compensation" for the property to make an offer. Just compensation shall not be less than the agency's approved appraisal of the fair market value (synonymous with "market value").

In general, when more than market value is paid, the marginal difference must be justified by the particular agency program and set forth as a justified explanation by one properly qualified to do so. Federal programs typically specify the basis for any such differences and establish limits.

Federal Land Policy and Management Act of 1976

FLPMA is internally considered as the BLM's most basic written guidance for appraisal functions and land activities, including land exchanges.

Section 1701 of FLPMA states policy of the United States that the public lands are to be retained in Federal ownership unless planning procedures determine that disposal of a particular parcel will serve the national interest. The United States is to receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute. Uniform procedures are to be established by statute to require each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress the review of disposals in excess of a specified acreage.

FLPMA Section 1713 – Sales of public land tracts further states:

> Sales of public lands shall be made at a price not less than their fair market value as determined by the Secretary.

Section 1716–Exchanges of public lands or interests therein within the National Forest System provides for exchanges of land where the Secretary

concerned (Secretary of the Interior or Secretary of Agriculture) determines that the public interest will be well served by making that exchange, but with limitations. These include the Secretary concerned must find that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

FLPMA establishes provisions for land appraisals and for the conduct of land exchanges. For example, within 90 days after entering into an agreement to initiate a land exchange, arrangements were to be made for an appraisal. If within 180 days after the appraisal was submitted for review and approval by the Secretary concerned there was no agreement to accept the appraisal's findings, an arbitration procedure was established. Arbitration results were binding for a period of not to exceed two years. However, each party had 30 days after completion of arbitration to determine whether to proceed with the exchange, modify the exchange, or to withdraw from the exchange.

Alternatively, the parties to a proposed exchange could mutually agree to employ a process of bargaining or some other process to determine the values of the properties involved in the exchange.

New rules and regulations governing appraisals were required to reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions.

FIRREA, Title XI

The BLM is included among U.S. agencies covered under the provisions of Title XI, FIRREA. In addition to a definition of market value, which differs in wording but not in meaning from the UASFLA market value definition, the following definitions were specified:

> Appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.
>
> State certified appraiser means any individual who has satisfied the requirements for certification in a State or territory whose criteria for certification as a real estate appraiser currently meet the minimum criteria for certification issued by the Appraiser Qualifications Board (AQB) of the Foundation.

> State licensed appraiser means any individual who has satisfied the requirements for licensing in a State or territory where the licensing procedures comply with Title XI, FIRREA and where the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with Title XI.

Minimum appraisal standards for federally related transactions were established by stating that all appraisals for such transactions shall, as a minimum:

1. Conform to generally accepted appraisal standards as evidenced by the USPAP:
2. Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;
3. Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;
4. Be based upon the definition of market value as set forth in this subpart;
5. Be performed by State licensed or certified appraisers in accordance with requirements set forth in this subpart.

FIRREA addressed the importance of appraiser independence in part by providing:

> Staff appraisers. ...the appraiser must be independent of the lending, investment and collection functions and not involved, except as an appraiser, in the federally related transaction, and have no direct or indirect interest, financial or otherwise, in the property.
>
> Fee appraisers. If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

Competency of appraisers was also addressed as a principal element of the reforms established by Congress and was addressed as follows:

> All staff and fee appraisers performing appraisals in connection with federally related transactions must be State certified or

licensed, as appropriate. However, a State certified or licensed appraiser may not be considered competent solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

Federal Land Exchange Facilitation Act

Two of this Act's[67] most important purposes were (1) providing more uniform rules and regulations pertaining to land appraisals, which reflect nationally recognized appraisal standards, and (2) establishing procedures and guidance for the resolution of appraisal disputes. To accomplish these purposes, FLPMA was amended.

FLEFA requires that within 90 days of an agreement to initiate and exchange (ATI) the Secretary involved and the private party or parties shall arrange for an appraisal. (Emphasis added.) The Federal and private parties are permitted to negotiate terms for the contract, including its timing.[68] Alternative means of dispute resolution are set forth, including consideration of additional qualified appraisals. The Act requires equal treatment for Federal lands, including the application of similar appraisal requirements and standards.

There are special provisions of the Act to conduct "approximately equal value" exchanges where the lands transferred from Federal ownership do not exceed approximately $150,000.

FLEFA permits a negotiation of the parties to determine who pays for costs or other responsibilities or requirements associated with an exchange. The Secretary is permitted, after a determination of public interest justification, to adjust the "relative values" in order to adjust for such costs.

Chapter II – Bureau of Land Management, DOI, Part 2200 – Exchanges: General Procedures establishes the following definitions:

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[67] Title 43 U.S.C. Part 2200 ...

[68] The concept of contract "terms" is taken to mean the contracting details including identification of the client, the amount of payment, when and how payment is to be made, and similar arrangements. It does not mean the acceptance of special instructions or hypothetical conditions that would render the appraisal as less than an independent opinion of market value under all applicable appraisal standards. The appraisal contract so provided is also differed from a "preliminary value estimate," which may be contracted for and used as a part of preliminary analyses, and which is not to be confused with or substituted for a complete appraisal.

(a) Adjustments to relative values means compensation for exchange-related costs, or other responsibilities or requirements assumed by one party, which ordinarily would be borne by the other party. These adjustments do not alter the agreed upon value of the lands involved in an exchange.
(b) Appraisal or appraisal report means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s), supported by the presentation and analysis of relevant market information.
(c) Authorized officer means any employee of the BLM who has been delegated the authority and responsibility to make decisions and perform the duties described in this part.
(d) Highest and best use means the most probable legal use of a property, based on market evidence as of the date of valuation, expressed in an appraiser's supported opinion.
(e) Market value means the most probable price in cash, or terms equivalent to cash, that lands or interests in lands should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably and the price is not affected by undue influence.
(f) Statement of value means a written report prepared by a qualified appraiser that states the appraiser's conclusion(s) of value.

Sec. 2200.0-6 Policy establishes that land exchanges are discretionary:

> The Secretary is not required to exchange any federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. ...Any party may withdraw from and terminate an exchange proposal or an agreement to initiate an exchange at any time during the exchange process....

Sec. 2200.0-6 also requires a determination of public interest in affecting a land exchange:

> The authorized officer may complete an exchange only after a determination is made that the public interest will be well served.

The basis for equal value exchanges is specified in Sec. 2200.0-6 as:

> ...An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), through bargaining based on appraisal(s), or through arbitration.

The scope of 43 CFR regulations pertaining to the BLM is identified in Sec. 2200.0-7 Scope as:

> (a) These rules set forth the procedures for conducting exchanges of Federal lands. The procedures in these rules are supplemented by the BLM Manual 9310 and Exchange Handbook. The contents of these supplemental materials are not considered to be a part of these rules.
>
> (b) ...There are a variety of statutes administered by the Secretary, that authorize land trades which may include Federal lands, as for example certain National Wildlife Refuge System and National Park System exchange acts. The procedures and requirements associated with or imposed by any one of these other statutes may not be entirely consistent with the rules in this part, as the rules in this part are intended primarily to implement the FLPMA land exchange provisions. If there is any such inconsistency, and if Federal lands are involved, the inconsistent procedures or statutory requirements will prevail. Otherwise, the regulations in this part will be followed.

Handbooks and Manuals

National written guidance by the BLM for Lands and Realty staff in land exchanges, and for land appraisals generally, is provided in the BLM Exchange Handbook and the Manual 9310 respectively. The Exchange Handbook serves as an extension to FLPMA and FLEFA, and provides more detailed operating instructions and reasoning for land exchanges. The Manual 9310 is more general and its provisions are not well integrated into the Exchange Handbook.

BLM Exchange Handbook

To provide focus, the following comments pertain only to Chapter 8, "Reaching Agreement on Value." A central theme of the Exchange Handbook is the necessity to develop an open, and hopefully successful, working relationship between the parties. "The land exchange process should be viewed as a consensus-building process to facilitate agreement and mutual resolution of legitimate differences."[69]

[69] Exchange Handbook. Chapter 8. p. 1.

The Exchange Handbook recognizes that an approved appraisal [which must meet "qualified appraiser" standards and by approved by a qualified appraiser] be completed and an agreement to exchange fully documented. When an agreement on "value" is not reached, discretionary processes [on the part of the Secretary] are available, as provided by law. Specifically:

> ...the authority for final value settlements rests with the State Director. The State Director may agree to an amount more or less than the approved estimate of market value provided by the appraisal. A decision to exchange land at other than the approved appraised value must be thoroughly documented in the case file. Only the State Director has the delegated authority to agree to an amount which is more or less than the approved appraised value for any portion of a land exchange.[70]

Five avenues as options for resolving value disputes:

1. Submit the disputed appraisal to another qualified appraiser for review.
2. Obtain an additional appraisal.
3. Involve an impartial third party to facilitate communication and resolution of the dispute.
4. Other acceptable and commonly recognized practices for resolving value disputes.
5. Withdraw from the exchange.

"Other acceptable" practices include:

1. Bargaining.
2. Other commonly recognized value dispute options.
3. Arbitration.

The Exchange Handbook requires that requests for an estimate of value are to be submitted to the Lead State Appraiser. The type of appraisal report needed should be identified in the request and determined through consultation with the appraisal staff. An appraisal is defined as: "a document independently and impartially prepared by a qualified appraiser. The report describes the work and sets forth the information and analysis supporting the appraiser's estimate of market value for the lands or interest in lands involved in the exchange."

[70] Exchange Handbook. Chapter 8. p. 2.

Provisions for appraisals also state that the BLM policy (43 CFR 2201.0-6) requires completion of exchanges on an equal value basis. Different laws use the terms fair market value or market value. The BLM land exchange regulations use only the term market value. The appraisers recommendations concerning market value help BLM managers determine when the value of lands or interest in land involved in the exchange are equal.

Four types of appraisals are identified by the Exchange Handbook:

1. **Preliminary estimate**: A preliminary estimate is a short oral or written report estimating a value or a range of values for properties....Because preliminary estimates are brief they should be used for internal purposes only.
2. **Statements** of **Value**: "Prepared by a qualified appraiser, a statement of value is a written report that states and supports the appraiser's conclusion that the value of the Federal lands involved in an exchange does not exceed $150,000. This product is used only for processing an approximately equal value exchange."
3. **Area Wide Appraisal**: Also known as a project appraisal or mass appraisal, an area wide appraisal can be used to estimate value (or ranges of value) for a group of parcels that have many similar characteristics.
4. **Complete Appraisal**: A complete appraisal is a fully researched and documented analysis of all applicable approaches to value.... A complete appraisal may be presented in either a summary or self-contained report format.

Other processes for valuation were provided by 43 CFR 2201.1 (d) when appraisal information is so lacking that a reliable appraisal is not possible or when properties to be valued are so unusual or the market so stagnant that there are no "comparables." Bidding processes were mentioned as an alternative.

BLM Appraisal Manual

Prior to the BLM's most recent revisions in 1999, Release 9-274 of BLM Manual 9310, Appraisal of Real Property, dated June 19, 1987 (1987 BLM Manual), was used nationally as the principal internal BLM guidance to appraisals and appraisal reviews. It is notable that the 1987 Manual was developed in the year that USPAP standards were first established, and two years prior to their adoption by the Foundation. We are unaware of any substantive changes to the Manual between 1987 and the 1999 revision.

1987 Version, BLM Manual 9310

The 1987 version of BLM Manual 9310 was intended to establish policy for "preparing real property appraisals and approving the fair market value related to the authorized use and sale of public lands, acquisition of non-federal land for public purposes, and exchange of such lands **consistent with BLM program objectives.** [Emphasis added.] Exempted from the provisions of the manual were:

1. Timber sales,
2. Mineral or oil and gas leasing,
3. Mineral material disposal, or
4. Mineral development.[71]

There was no stated reason for these exceptions from the manual's applicability. Objectives of the manual were identified as:

1. Provide a uniform, impartial procedure for estimating fair market value.

2. Establish minimum appraisal documentation and review standards.
3. Assure preparation of appraisal reports and approval of fair market value by qualified persons.

Authority for the 1987 BLM Manual was, in part, cited as:

1. FLPMA
2. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
3. Sec. 28(1), Mineral Leasing Act, pertaining to oil and gas right-of-ways, 30 &.S.C. 195, as amended and supplemented
4. 43 CFR 2100 – Acquisitions; 2200 – Exchanges; 2500 – Disposition, Occupancy and Use; 2700 – Disposition Sales; 2720 – Conveyance of Federally-Owned Mineral Interests; 28 – Rights-of-way; General
5. Delegation of the Secretary's Authority to the Director, found at 235 DM 1 and described in 602 DM 1 of the Department Manual
6. Delegation of Authority, Section 1203

The BLM Director and Deputy Director were assigned overall responsibility for compliance with statutory authorities and departmental policies. Specific duties with regard to appraisal functions were assigned to the Deputy Director.

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[71] BLM. 9310 – Real Property Appraisals. Washington, D.C. June 19, 1987.

State Directors were charged with exercising their delegated authority to impartially administer "an appraisal program consistent with applicable laws and departmental policies." In turn, the State Chief Appraiser "having delegated authority, shall establish procedures implementing policies of this Manual." Within this chain of authority, the State Chief Appraiser was charged with specific administrative duties to operationalize the Manual's provisions. There was no provision for a Washington "Chief Appraiser."

Although the 1987 BLM Manual contained only 15 pages (including title page, table of contents, and two pages of definitions), its provisions were direct and succinct.[72] Briefly, its provisions included:

1. Appraisal reports shall be prepared for the acquisition of real property and for the sale or exchange of public lands or interest therein.
2. Appraisal reports shall be prepared by qualified fee or staff appraisers prior to the sale, exchange, or acquisition of public lands.
3. Contracts for preparation of fee appraisals shall be reviewed by the State Chief Appraiser or his designee.
4. The Chief Appraiser shall decide when it is necessary to prepare more than one appraisal for realty actions.
5. Minimum content requirements for an appraisal report are specified.
6. A requirement that documentation of appraisal reports be consistent with UASFLA.
7. A requirement that appraisal reports be prepared in accordance with the standards of professional practice and conduct approved and adopted by nationally recognized professional appraisal organizations.
8. Record copies of all appraisal shall be retained in the office files or case files. Special provisions were to apply to "sensitive" information, to be managed in accordance with revised BLM Manual Section 1273.
9. The Chief Appraisal shall examine the appraisal reports and approve fair market value.
10. Standards for approvals and appraisal reviews were included.

[72] We note that the copy we received, which was somewhat difficult to obtain, may not have included the entirety of the manual. For example, definitions were shown for terms to and including only the letter "S."

11. An authorized review appraiser was required; such appraiser was responsible for "certifying that the value approved represents fair market value."
12. Special requirements were established for final approval of exchange values. These included requirements for special certifying statements and assurance that basic standards were met.
13. Acquisition projects must comply with provisions of the Uniform Relocation and Real Property Acquisition Act of 1970.
14. State office appraisal staffs were responsible for preparing appraisal reports which involve mineral interests when specified conditions were present. Minimum required procedures were established.

The term "preliminary value estimate" was included in the Glossary of Terms and was defined as:

> ...a brief written estimate of value prepared by a qualified appraiser. The estimate should be based on an inspection of the property, reference information relied upon, and include appropriate assumptions and conditions to avoid any potential misuse. Reviewer's approval should include a statement that the value estimate is tentative pending preparation of an acceptable appraisal estimating fair market value.

1999 Version, BLM Manual 9310

According to the 1999 BLM Manual 9310, changes were a result of FLEFA, FIRREA, and a change in the BLM Manual's 1203 Delegation of Authority.

FLEFA directed the DOI and Agriculture to develop and implement comprehensive, uniform standards for appraisals used in land exchanges. FIRREA directed States to promulgate rules governing the certification and licensing of real estate appraisers. BLM subsequently adopted the policy that appraisers accepting BLM assignments must be state certified.

Delegation of authority was revised to clarify the role and responsibilities of the authorized officer and the reviewing appraiser. According to our interviews it appears that this clarification was necessary because of internal problems such as those disclosed in prior OIG and GAO investigations.

The 1999 BLM Manual 9310 specifies that the authority to approve market value can only be redelegated from the State Director to the lead state appraiser or other qualified BLM review appraisers. Associated responsibilities were listed as (excerpts only):

1. Assistant Director, Minerals, Realty & Resource Protection is responsible for ensuring the development of real property appraisal documentation and review standards and ensuring effective administration of the Bureau appraisal function.
2. Lands and Realty Group Manager with the assistance of the Washington Office Senior Specialist – Appraisal is responsible for (1) integrating the appraisal function into the land acquisition, exchange, and use authorization process; (2) establishing BLM documentation standards for real estate appraisals and related materials; (3) establishing BLM qualifications for appraisers; (4) setting minimum BLM appraisal review standards; (5) conducting periodic management and technical evaluations assessing the appraisal function and adherence to standards, qualifications, and guidelines; and (6) providing managerial and technical assistance to State and Field Offices relating to the appraisal program.
3. Each State Director is responsible for: (1) delegating authority to a qualified BLM review appraiser to approve or recommend market values for agency use; (2) evaluating the quality of appraisal services provided by staff; (3) ensuring that all appraisal reports used in a BLM land action are recommended or approved by a qualified BLM review appraiser; (4) ensuring that appraisal reports provided during the land exchange bargaining process are reviewed by a qualified BLM review appraiser; and (5) ensuring that appraisers and reviewers are free from pressures to reach predetermined values.
4. Field Manager is responsible for: (1) making written requests to the lead state appraiser or other designed reviewer for appraisals...on a timely basis. Such requests should specify the purpose, function, and intended users of the appraisal, legal description of the property, the estate to be appraised, current information as to the status of title, ownership and information concerning the presence of hazardous substances, and the presence of potentially valuable resources.... (2) requesting appraisal consultation services early in a land tenure action.... (3) request the appropriate appraisal services ahead of time ... from the lead state appraiser for appraisal to be procured independently by proponents or property owners.

5. Lead State Appraiser is responsible for (1) planning, organizing and providing program leadership for the appraisal function; (2) setting operation standards and reporting requirements....
6. Qualified Review Appraiser is responsible for (1) assuring each appraisal reviewed meets applicable professional and agency standards and policy; (2) depending on the delegation of authority, either approving a value for agency use or recommending a supported opinion of market value ... to the lead state appraiser or to the State Director.

Under the 1999 BLM Manual a number of policies were established for appraisal functions. These include:

1. All staff appraisers will either hold a state certification or be actively working toward achieving state certification.
2. Applicable standards include the USPAP and to the extent appropriate the UASFLA.
3. Market Transactions Involving Natural Resource Values. Market value assumes an open, competitive market. Highest and best use assumes a property has value for a market derived use. Value must be based on reasoning and assumptions that are supported by comparable transactions having a similar highest and best use....Transactions involving, private parties where both buyer and seller are knowledgeable and financially motivated are the best sales for use by the appraiser.
4. If the appraiser concludes that the property's highest and best use differs from its current use, that opinion must be supported by a thorough analysis of the relevant factors. The appraiser must justify that the proposed change in zoning is more probable to occur than not.

PVEs are commonly used by the BLM in establishing the feasibility of a proposed or prospective land exchange. The 1999 BLM Manual provides that prior to obtaining a Complete Appraisal that a PVE "should assist in determining the feasibility of an exchange. The value estimate should be consistent with the intended use and contain limiting conditions affecting its reliability. A preliminary estimate may be a limited appraisal or consulting service depending on the intended use. Typically value is expressed as a range of value. Preliminary estimates must comply with USPAP."

According to the 1999 BLM Manual, "appraisal reports and reviews shall meet regulatory and applicable standards, including 43 CFR 2200 for land exchanges, The Uniform Appraisal Standards for Federal Land Acquisitions;

The Federal Uniform Relocation and Assistance Act, USPAP and instructions contained in the statutes."

Where there are exceptions or conflicts between regulatory and non-regulatory standards, regulatory requirements will prevail. If necessary, the Jurisdictional Exception Rule of USPAP may be applied.

Under the manual's provisions the use of a highest and best use estimate other than that which is the existing use of land requires special analysis and documentation, including:

1. The appraiser must provide clear and supportable explanation documenting the reasonable probability of the likely change in use.
2. The appraiser must explain and justify the possible zoning change, including the time and expense involved and the risk associated with not getting the zoning change.
3. As with any highest and best use analysis, the appraiser must consider and document the spectrum of probable uses that are legally permissible, physically possible, and financially feasible and logically develop how the most productive use was chosen.

The 1999 manual is explicit regarding Delegation of Authority.

> Authority to approve market value is delegated to the State Director. This authority can be redelegated to the lead state appraiser or other qualified BLM review appraiser only. A contractor or a reviewer from another agency does not have any approval authority and therefore can only recommend an appraisal report to a BLM reviewer or the State Director.

In order to receive authority to perform an appraisal review:

1. All BLM review appraisers must have delegated authority to approve (or recommend) market value from the State Director....
2. The standard delegation to lead state appraisers gives the holder authority to approve market value for al actions.... Specific review and administrative delegations may be made to other qualified BLM reviewers for specific projects or geographic areas. A State Director may also wish to retain approval authority in a specific situation. In this instance, the State Director will delegate the authority to recommend values only. For those special situations,

the BLM review appraiser's report is transmitted to the State Director rather than to the authorized officer for the realty action.

Generally, BLM appraisal reviews will comply with Standard 3 of USPAP. Additionally, "the review shall ascertain whether the appraisal is commensurate in scope and detail with the action for which it was prepared, and whether it complies with supplemental BLM appraisal standards, policies and instructions. As a supplemental agency standard, the review appraiser shall specifically address the adequacy of the highest and best use analysis."

Appraisals involving land exchanges "must comply with the provisions of 43 CFR 2200 and with the Uniform Appraisal Standards for Federal Land Acquisitions, 1992, to the extent appropriate."

FLEFA regulations require for appraisal of multiple tracts in assembled land exchanges that "when lands under different ownerships are offered in an assembled land exchange, these lands will be appraised separately, if so stipulated in the agreement to initiate the exchange. ...The regulations further provide that both the federal and non-federal lands are to be appraised in a similar manner." These regulations are cited in the 1999 BLM Manual.

APPENDIX

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240

October 4, 2002

David Bunton, Executive Vice President
The Appraisal Foundation
1029 Vermont Avenue, Suite 900
Washington, D.C. 20005

Re: Response of the Bureau of Land Management to The Appraisal Foundation's Draft Report dated August 29, 2002

Dear Mr. Bunton:

The Bureau of Land Management (BLM) appreciates the opportunity to review and comment on The Appraisal Foundation's (Foundation) Draft Report entitled "Evaluation of the Appraisal Organization of the Department of Interior Bureau of Land Management, Including a Special Evaluation of an Alternative Approach Used in St. George, Utah," dated August 29, 2002, which BLM contracted with the Foundation to complete.

At the outset, I want you to know that we appreciate your efforts and your many thoughtful suggestions. To the extent that you received less than full cooperation from BLM employees, I apologize and commit to you that this effort has my full support. I am personally committed to ensuring that we make the BLM appraisal process one that all Americans have confidence in. The BLM is focused on maintaining an appraisal program that produces impartial valuations, complies with the appropriate appraisal standards, and provides credible estimates of value for use in making management decisions.

As a part of our effort to achieve these goals, I will convene a working group to review the Foundation's final report and provide me with recommendations on immediate steps the BLM can take to improve its appraisal system. In addition, I will convene a diverse group made up of both non-federal and federal experts to examine our land exchange process in its entirety. Again, the goal is to provide the public with the assurance that the land exchange process is fair and equitable.

Very briefly, I would like to highlight three major observations I have concerning the draft report.

I. Proposed San Rafael Land Exchange

Reference to the San Rafael legislation confuses BLM's limited administrative authority with the broad legislative authority of Congress. BLM's authority for land exchanges is pursuant to the Federal Land Policy and Management Act (FLPMA). On the other hand, Congress has broad legislative authority

under its Article II plenary powers to pass laws concerning public lands including directing specific land exchanges that do not necessarily adhere to specific requirements or standards that bind the Department. The San Rafael land exchange is one such proposed, legislated land exchange.

This is a fundamental distinction the draft report does not discuss. Legislated land exchanges serve entirely different purposes from FLPMA land exchanges. While FLPMA requires exchanges of equal monetary value, legislated exchanges often consider public interest values and solve land management problems beyond those addressable under FLPMA. The protection of habitat or unique landscapes or consolidation of intermingled state and federal tracts with different statutory missions are good examples.

Congressional land grants to states and other entities in the 19th and 20th centuries created intermingled or "checkerboard" patterns of public land ownership. When Congress reserved public lands for particular purposes (monuments and national parks), state inholdings dedicated to the support of public schools were often captured within the federal reservations. These congressional purposes were not always consistent with the legal constraints imposed upon the captured state inholdings. In Utah, for example, reservation of public lands for conservation purposes, such as national parks, forests, and monuments have captured state inholdings that the federal enabling act and the Utah constitution requires to be managed for income producing purposes in support of state schools. It benefits both the State and the Department of the Interior to consolidate their land ownership to remove these conflicts for their respective management. FLPMA equal value land exchanges were not designed to value properties chiefly valuable for scenery, habitat or cultural resources. Indeed, it is often because the requirements of FLPMA make a particular exchange legally impossible or difficult that Congress may consider use of the legislated land exchange approach.

When a state and the Department of the Interior negotiate a land exchange, to be ratified by Congress, there is no legal requirement that any particular statutory procedure be followed. Congress is the ultimate judge of the public interest in any legislated exchange which it accomplishes through public hearings, the legislative record, and ultimately the passage of legislation. Since the proposed San Rafael land exchange is being considered through the legislative process, BLM believes it is inappropriate for the proposed San Rafael land exchange to be referenced in the final report, unless it is clearly differentiated from the FLPMA type land exchange in the appraisal process. As a result, the report's observations associated with a legislated land exchange are not beneficial in arriving at concrete recommendations that BLM can implement administratively for FLPMA land exchanges.

II. Investigation by the Department of Justice

We are unclear about your references to the Department of Justice. We assume your recommendation may have intended for BLM to seek a review of its appraisal practices for consistency with the appraisal practices of the Land Acquisition Section of the Environment and Natural Resources Division of the Department of Justice. If this was the case, the suggestion may have some merit since the Acquisition Section is responsible for appraising properties condemned by the U.S. Government to ensure just compensation to the landowner and must

routinely defend its appraisals in court. If this was the Foundation's intention, the recommendation should be revised to ensure the intent is clear. If you are suggesting any other type of investigation, the Inspector General Act of 1978 first empowers the Inspector General, not DOJ to conduct investigations of alleged wrong doing.

III. BLM Manager's Involvement in Appraisals

The draft report makes a number of assertions regarding the involvement of BLM managers in the appraisal process. However, the draft report does not acknowledge the necessary and legitimate role of public land managers in the sale and exchange process. FLPMA codified the concept of "multiple use" management for the BLM. Multiple use management directs that managers consider multiple values and uses – grazing, recreation, historic/cultural, mining, habitat, oil and gas – as they manage a particular area of public land. We believe this requires an interdisciplinary approach. Accordingly, the expertise of various professionals is integrated into BLM's multiple-use decision-making process. FLPMA mandates this interdisciplinary approach, and the appraisal function is just one component that BLM managers must consider when making important land use decisions on disposal, either through sale or exchange. Thus, it is more than simply the "BLM culture," as referenced in the draft report, that requires BLM to adopt this interdisciplinary approach to FLPMA land exchanges. FLPMA itself demands this approach. Nevertheless, some of the issues raised by the Foundation should and will be addressed by the appraisal working group.

The BLM agrees that a constructive next step will be to undertake a systematic review of laws, appraisal standards, current practices, internal guidance, and delegations of authority associated with the appraisal program. This type of review, as recommended by the Foundation, will help determine where changes and clarification in BLM's guidance and practices may be needed. This may help further refine the roles of the appraisers, managers and others who may have specific expertise, such as in cultural resources, in understanding a multi-disciplinary team approach to land exchanges.

BLM's Lands and Realty Group has prepared additional comments on other aspects of the draft report.[1] As agreed in our meeting of September 6, 2002, please include this letter and attached comments as an appendix to your final report.

It is BLM's firm commitment to make its appraisal program sound and effective and we appreciate the Foundation's interest in helping the BLM to accomplish this goal.

Sincerely,

Jim Hughes
Deputy Director for Policy and External Affairs

[1] See attached, Bureau of Land of Land Management, Land and Realty Group, Comments as of October 4, 2002 on The Appraisal Foundation's Draft Report Titled: "Evaluation of the Appraisal Organization of The Department of Interior Bureau of Land Management" dated August 29, 2002

APPENDIX

Bureau of Land Management, Land and Realty Group, Comments as of October 4, 2002 on The Appraisal Foundation's Draft Report Titled: "Evaluation of the Appraisal Organization of the Department of Interior Bureau of Land Management" dated August 29, 2002

As the Bureau Land Management (BLM) moves forward to address the issues you have raised, it believes the report style and format used by The Appraisal Foundation (Foundation) in providing conclusions and recommendations to the U.S. Forest Service upon completion of its 2000 appraisal program evaluation would provide the type of specificity the BLM needs in the Foundation's evaluation of the BLM's appraisal program.

We are concerned that the Foundation's draft report does not provide a "peer review" as requested in BLM's contract with the Foundation, but appears instead to utilize an investigative report style used by the General Accounting Office (GAO) or the Office of the Inspector General (OIG). "We understand that it may also be used in conjunction with studies by the OIG, General Accounting Office (GAO), and/or other investigative or compliance agencies of the Federal government. It, therefore, contains details that might not be contained if the B.M. were the only intended user." (Page 5 of the draft report.) As currently written, the draft report's use as a peer review analysis of BLM's appraisal program with recommendations appears somewhat limited.

While the draft report technically may comply with the requirements of the evaluation contract as stated in Section 3.0, items 1 through 8, it does not contain any information about the "peer review" process, interview results and findings, as requested. At a minimum, it would be helpful to have general summaries on a state-by-state basis. This lack of specificity undercuts the support and documentation for the draft report's findings and recommendations. More significantly, it hinders BLM's ability to address problems, identify areas where things may be working well and should be duplicated elsewhere, and develop proposals to improve the appraisal function.

The draft report makes numerous allegations, statements and judgments that are of an inflammatory nature, but do not appear to be well-supported by specific facts or case examples contained in the draft report. For example, BLM requested an independent analysis, however the draft report appears to rely heavily on anecdotal evidence, employee complaints, and newspaper accounts. The unsupported conclusions do not help BLM identify specific areas of confusion or misapplication of BLM policy. It would be beneficial for the final report to provide more details and attempt to quantify and qualify the findings of the team, both positive and negative.

Your Draft Report has identified that some managers and appraisers may be confused or, are not familiar with all the functions that are delegated to various agency positions and how that relates

to an appraiser's independence. The BLM will undertake a full review of this situation to more accurately assess problems and make necessary changes. The BLM will conduct a manager's course in appraisals for managers, appraisers, and non-appraisal staff that includes a detailed section on the delegation of authority to each functional position.

The draft report does not address the adequacy of existing guidance and standards. The report does not identify any inconsistencies in BLM's Appraisal Manual, nor are there specific recommendations to correct any which may exist. Many of the concerns expressed in the draft report regarding proponent paid appraisals, undue pressure on appraisers, unsolicited appraisal reports, and inappropriate use of "public interest values" are already included in the existing Appraisal Manual and Draft Land Exchange Handbook. We expected the draft report and final report to identify specific changes in procedures and clarifications in written guidance that might be appropriate to comply with appraisal standards and that were within BLM's authority to implement. The draft report's recommendation that changes and clarifications in written policy are needed is merely a restatement of the task we requested the Foundation to complete. Again, more specificity would enable us to better address guidance "gaps."

The draft report also fails to cite applicable appraisals standards or specific instances of noncompliance with the Uniform Standards of Professional Appraisal Practice. The draft report on page 46 states: "It appears that some of the Senior Specialist-Appraisal's appraisal recommendations were not in compliance with applicable appraisal standards." There is no supporting evidence of noncompliance or bias as alleged on page 47 of the draft report. Additional specificity would be helpful to BLM as it moves forward to address appraisal guidance or standards.