



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

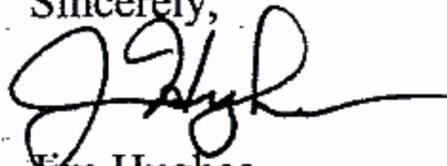
The draft report makes a number of assertions regarding the involvement of BLM managers in the appraisal process. However, the draft report does not acknowledge the necessary and legitimate role of public land managers in the sale and exchange process. FLPMA codified the concept of "multiple use" management 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.