



U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

**FOLLOWUP OF
NEVADA LAND EXCHANGE ACTIVITIES,
BUREAU OF LAND MANAGEMENT**

**REPORT NO. 98-I-689
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United States Department of the Interior

OFFICE OF INSPECTOR GENERAL

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AUDIT REPORT

Memorandum

To: Director, Bureau of Land Management

From: Robert J. Williams *Robert J. Williams*
Assistant Inspector General for Audits

Subject: Audit Report on Followup of Nevada Land Exchange Activities, Bureau of Land Management (No. 98-I-689)

INTRODUCTION

This report presents the results of our followup review of recommendations contained in our July 1996 audit report "Nevada Land Exchange Activities, Bureau of Land Management" (No. 96-I-1025). The objective of the followup review was to determine whether the Bureau satisfactorily implemented the recommendations made in our 1996 report and whether any new recommendations were warranted. We issued a separate advisory report (No. 98-I-363) in March 1998 on the Del Webb land exchange ("The Del Webb Land Exchange in Nevada, Bureau of Land Management").

BACKGROUND

The Bureau of Land Management is responsible for managing and protecting over 260 million acres of Federal land, of which about 48 million acres are in the State of Nevada. The Congress has emphasized the use of land exchanges and fee purchases to acquire lands containing resource values of public significance and to improve the manageability of Federal land by consolidating its land ownership. The Bureau prefers to acquire land through land exchanges, which may be initiated by the Bureau or other interested parties called proponents.¹ In recent years, the Bureau has identified about 70,000 acres of Federal land for disposal in the Las Vegas Valley of Nevada, which continues to be one of the fastest growing metropolitan areas in the United States. The potential for real estate development

¹The Bureau prefers to acquire lands through exchanges because of the relatively low impact that exchanges have on local government tax revenues.

in the private market associated with this growth in the Valley has created significant interest in acquiring available Federal land.

The Bureau conducts land exchanges under the authority of Section 206 of the Federal Land Policy and Management Act of 1976 (Public Law 94-579), as amended, which authorizes the Secretary of the Interior to dispose of Federal land by exchange when the public interest will be well served. Under Section 206, the values of the lands exchanged must be equal or, if not equal, must be equalized by a cash payment by either party except in circumstances where the value of the Federal land transferred by the Government is not more than \$150,000 (the value of the Federal land transferred in the exchanges we reviewed exceeded \$150,000).

Section 206 specifically directs the Secretary to make the amount of such payments as small as possible but states that in no event may the value difference between the properties exceed 25 percent of the value of the Federal land exchanged. On August 20, 1988, the Congress enacted the Federal Land Exchange Facilitation Act of 1988 (Public Law 100-409), which granted the Secretary limited authority to approve adjustments in the values of lands exchanged as a means of compensating a party for incurring costs such as those for land surveys, mineral examinations, and title searches which would ordinarily be borne by the other party. In December 1993, the Bureau finalized comprehensive regulations for land exchanges (43 CFR 2200) to implement the provisions of both Acts.

SCOPE OF AUDIT

The scope of this followup review included an evaluation of actions taken to implement the five recommendations made in our July 1996 report. The status of the recommendations and corrective actions is in Appendix 2. To accomplish our objective, we reviewed all nine exchange transactions completed by the Bureau's Las Vegas Field Office between June 1, 1995, and August 1, 1997. In completing the nine transactions, the Bureau disposed of 4,306 acres of Federal land in the Las Vegas area, valued at approximately \$64.4 million, and acquired 8,305 acres of private land, valued at approximately \$73.6 million.² We also reviewed the processing of four other exchanges that were in progress at the Field Office. The exchanges and transactions included in our review are listed in Appendix 3.

The audit included visits to the Bureau's Nevada State Office in Reno, Nevada, and its Las Vegas Field Office in Las Vegas, Nevada. We also visited the offices of Clark and Douglas Counties and the Tahoe Regional Planning Agency in Nevada to analyze land use regulations, zoning restrictions, and land use application records in order to identify development restrictions imposed on exchange lands that may have affected the valuation of some of the exchanged lands. We also contacted Bureau officials to obtain their views on specific aspects of the exchanges and to verify or supplement information and data obtained through our review of the exchange files. In addition, we contacted representatives

²The difference in land values does not represent a profit to the Bureau. For the most part, the additional value received by the Bureau was to cover the difference in value from previous transactions in which the same proponent received land that was more valuable than the land acquired by the Bureau.

of the Department of Agriculture's U.S. Forest Service and Office of Inspector General concerning the Deer Creek, Cashman, and Dreyfus/Zephyr Cove exchanges; representatives of the Clark County Department of Comprehensive Planning and the Tahoe Regional Planning Agency concerning the Cashman and the Dreyfus/Zephyr Cove exchanges, respectively; and representatives of the contract appraisal firms responsible for the appraisal reports associated with the Cashman and the Dreyfus/Zephyr Cove exchanges. Further, we contacted a representative of the Appraisal Unit of the Department of Justice who was a coauthor of the 1992 revision of the "Uniform Appraisal Standards for Federal Land Acquisitions" so that we could enhance our understanding of the principles applicable to the appraisal of property for Federal acquisition.

This followup review was made in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. We also reviewed the Departmental Accountability Report for fiscal year 1996, which includes information required by the Federal Managers' Financial Integrity Act, and the Bureau of Land Management's annual assurance statements for fiscal years 1996 and 1997. Administration and oversight of the Nevada land exchange appraisal process were identified as a new material weakness in the Bureau's fiscal year 1997 assurance statement. Accordingly, we also reviewed the Bureau's management control evaluation report, which identified this new material weakness.

PRIOR AUDIT COVERAGE

Our July 1996 audit stated that while the Nevada State Office had acquired some high quality properties by exchanging lands with private entities (proponents), the Office did not consistently follow prescribed land exchange regulations or procedures and ensure that fair and equal value was received in completing three of the four exchanges we reviewed. As a result, we estimated that the Government may have lost revenues totaling about \$4.4 million in completing the three exchanges. In addition, we found that the Nevada State Office had acquired about 2,461 acres of land, with an exchange value of \$2.7 million, that had no discernible mission-related purpose.

We recommended that the Director of the Nevada State Office (1) institute competitive procedures (sale or competitive exchange) into the land disposal process to the maximum extent practicable; (2) direct that all easements on Federal lands proposed for disposal be reviewed to verify grantee needs and that actions be taken to remove any easements that are not needed before the Federal lands are exchanged or sold; and (3) establish the controls necessary to ensure that land exchanges are processed in full accordance with applicable laws, regulations, and Bureau procedures. We further recommended that, at a minimum, these controls ensure that land to be acquired is in conformance with approved land-use plans or properly executed plan amendments; that land acquired and disposed of is properly valued; and that all significant decisions involving the exchange transactions, particularly those affecting land valuation, are fully justified and documented in the exchange file.

In addition, the report stated that the Nevada State Office exchanged rather than sold land within the land sale area designated by the Santini-Burton Act. We therefore concluded that because of the Nevada State Office's decision to exchange rather than sell lands within the designated area, the U.S. Treasury did not receive revenues of \$7.8 million for repayment of incurred costs for acquiring land within the Lake Tahoe Basin. We recommended that the Director of the Nevada State Office take appropriate actions to ensure that (1) the accounting reports of income and expenditures required by Section 2(e) of the Santini-Burton Act are prepared and submitted to Bureau headquarters for submission to the appropriate Congressional oversight committees and (2) the Nevada State Office uses, except in compelling circumstances, the land sales process when disposing of its Santini-Burton Act lands until the sales revenues generated closely approximate the Lake Tahoe Basin acquisition costs. We further recommended that any future exchange proposals be closely monitored to ensure that the exchange is justified and that the costs incurred as a result of the Santini-Burton Act remain relatively nominal.

RESULTS OF AUDIT

Of the five recommendations made in our July 1996 report, we found that the Bureau of Land Management had fully implemented three recommendations (Nos. A.2, B. 1, and B.2), had partially implemented one recommendation (No. A.1), and had not implemented one recommendation (No. A.3). Specifically, to implement Recommendation A.2, the Bureau's Washington Office issued an instruction memorandum providing new guidance regarding the removal of encumbrances prior to a public land sale or exchange. To implement Recommendation B. 1, the Bureau issued an instruction memorandum directing its National Business Center to provide the required biannual accounting information to the Washington Office's Legislative Affairs Group for transmittal to the appropriate Congressional committees. On April 14, 1997, the report was prepared and submitted to the Committee on Energy and Natural Resources. To implement Recommendation B.2, the Bureau's Washington Office obtained legal guidance from the Solicitor, and the Nevada State Office instructed the Las Vegas Field Office that Santini-Burton Act lands were available for sale only. On March 4, 1998, the Las Vegas Field Office notified an exchange proponent that selected Santini-Burton Act land would be excluded from the exchange.

The Bureau partially implemented Recommendation A. 1 by selecting a modified auction process to provide a viable approach for incorporating competition into the land disposal process. Since the Bureau had not developed and tested a pilot project using this new process, we considered the recommendation only partially implemented.

Regarding the unimplemented recommendation, we concluded that the Bureau's efforts to establish and follow controls to ensure that Nevada land exchanges are processed in full accordance with applicable laws, regulations, and procedures were generally unsuccessful for the exchanges reviewed. Our followup review found that controls associated with the processing of Nevada land exchanges were not adhered to or consistently complied with by management, which resulted in significant monetary losses to the Federal Government because the lands exchanged were not properly valued or were not in conformance with the

Bureau's current land use plan. We also determined that the Bureau's Land Exchange Handbook and Instruction Memorandum No. 97-1 13 contained guidance that appeared to conflict with language in Section 206 of the Federal Land Policy and Management Act or regulations implementing the requirements of the Act or that weakened the Bureau's organizational controls over the appraisal and valuation process for exchanges.

As a result of these inadequate implementation efforts, the Bureau continued to experience significant monetary losses in its Nevada land exchanges (see Appendix 1). Specifically, we believe that (1) about \$5.9 million was lost on the Deer Creek exchange because the Nevada State Office did not comply with the established delegation of authority requirements associated with land valuation; (2) about \$12.3 million was lost because the private lands included in the Cashman and Dreyfus/Zephyr Cove exchanges were not, in our opinion, appraised in full accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions"; and (3) about \$3.4 million could have been put to better use if the Bureau had not acquired three parcels of land that were not in conformance with the current land use plan and did not have a discernible mission-related purpose. We also noted that the Bureau's Washington Office did not follow established standards and controls for appraisals and land valuations and did not justify or document the propriety of its actions for the Del Webb exchange. The Government would have lost \$9.1 million based on the initial "development-based" appraisal of the selected Federal lands had the Bureau not obtained a second appraisal that was in conformance with the "Standards" because the appraisal was based on comparable sales.

Because of the recurrence of deficiencies noted in the Bureau's program and because the program has not been operated in a manner that protects the interests of the Government, we believe that the Bureau should identify not only the administration and oversight of the Nevada land exchange appraisal process but also the entire land exchange program as a material control weakness in the Departmental Accountability Report. In addition, we believe that the Bureau should place a temporary moratorium on land exchanges in the State of Nevada and establish a land exchange review team that includes non-Bureau experts to provide the Bureau with advice concerning compliance with established laws, regulations, and procedures for all significant land exchanges.

Prior Audit Report Recommendations

Recommendation A. 1. Institute competitive procedures (sale or competitive exchange) into the land disposal process to the maximum extent practicable.

In our July 1996 report, we noted that Clark County land records indicated that exchange proponents were realizing large profits by quickly selling the Las Vegas area lands obtained in land exchanges with the Nevada State Office. Consequently, we concluded that the Nevada State Office could maximize the public benefit by introducing competition into the land disposal process for Las Vegas area lands. The Bureau agreed to implement the recommendation, stating that it would develop a strategy to incorporate competitive procedures (competitive sale or exchange) into the land disposal process. The Nevada State

Office was to evaluate different competitive approaches and recommend an option for a prototype competitive land exchange by June 1, 1997. The Bureau stated that, depending on the results, a pilot project was to be developed and tested.

During our followup review, we found that the Nevada State Office had completed the evaluation and selected an option that called for a modified auction process to be implemented, which we believe could provide a viable approach for incorporating competition into the land disposal process. However, the Bureau had not developed and tested a pilot project. Accordingly, we consider this recommendation only partially implemented.

Recommendation A. 2. Direct that all easements on Federal lands proposed for disposal be reviewed to verify grantee needs and that actions be taken to remove any easements that are not needed before Federal lands are exchanged or sold.

In our July 1996 report, we noted that the Government's best interests were not fully protected because Bureau management did not adequately verify the need for an easement on the Federal land prior to exchanging the land with a private entity. In the case presented in our report, an easement encumbering the Federal land caused it to be appraised at only \$550,000, whereas without the easement, the appraised value would have been 10 times that amount. We reported that this exchange resulted in a significant loss to the Government and a windfall gain for the proponent and the City of Las Vegas when the City accepted cash and other inducements from the proponent as part of an agreement to relinquish the encumbering easement on a large portion of the property.

In our followup review, we found that the Bureau's Washington Office issued Instruction Memorandum No. 97-08 on October 10, 1996, which provided new guidance regarding the removal of encumbrances before public land was sold or exchanged. The guidance requires that all rights-of-way, easements, permits, or other encumbrances be reviewed as part of the case processing procedures and that actions be taken to clear encumbrances which are no longer needed before the Federal lands are transferred. The guidance also directs field offices to maintain documentation verifying the need for or release of such encumbrances in the exchange or sale case files. Based on this guidance, we consider the recommendation implemented.

Recommendation A. 3. Establish the controls necessary to ensure that land exchanges are processed in full accordance with applicable laws, regulations, and Bureau procedures.

In our July 1996 audit report, we noted that the Nevada State Office did not consistently follow the prescribed land exchange procedures and regulations and ensure that fair and equal value was received in completing three of the four exchanges we reviewed. Based on this conclusion, we further recommended that, at a minimum, sufficient controls be in place to ensure that land to be acquired is within approved land-use plans or properly executed plan amendments; that land acquired and disposed of is properly valued; and that all significant decisions involving the exchange transactions, particularly those affecting land valuation, are

fully justified and documented in the exchange file. The Bureau concurred with this recommendation, stating that its Washington Office would review the Nevada State Office exchange process to ensure that controls were adequate and that it would finalize a Bureauwide Land Exchange Handbook.

In our followup review, we found that the Bureau's Washington Office completed the control review and finalized a new Handbook. However, in our opinion, the Bureau's conclusions and its reported improvements for the processing of exchanges were not substantiated by documentation in the exchange files or evidence gathered during our review. We also found that the Bureau's new Handbook contained guidance on appraisal reviews and dispute resolutions which appeared to be in conflict with language in the applicable laws or implementing regulations or which would weaken the Bureau's organizational controls over the critically important appraisal and valuation process. In addition to the agreed-upon corrective actions, the Bureau performed an alternative management control review of the appraisal process between March and May 1997 that focused on Nevada land exchange appraisals. Based on the results of this review, the Bureau identified the administration and oversight of the Nevada land exchange appraisal process as a material weakness. However, in our opinion, this review did not adequately address the significant appraisal problems identified by our review of the Bureau's most recent Las Vegas area land exchanges. Accordingly, as discussed in the paragraphs that follow, we consider the recommendation unimplemented.

Bureau Technical Procedures Review. In November 1996, the Bureau's Washington Office formed a review team to perform a "technical procedures review" of "case file processing" for the Nevada land exchange program. The review team consisted of three employees, none of whom were qualified appraisers, selected from different Bureau offices. Two members of the technical procedures review team told us during our followup review that they had requested the Bureau to include an appraiser on the team to address appraisal and valuation issues. However, the members said that the Washington Office did not honor their request and that Washington Office personnel told them to consult instead with the Washington Office appraiser.

The team was directed to review the Nevada land exchange program and provide assurance that the Nevada State Office processed land exchanges in accordance with applicable laws and regulations and Bureau procedures. In accomplishing this work, the review team selected and reviewed six exchanges processed by the Las Vegas Field Office and four exchanges processed by the Elko District Office. The Las Vegas exchanges consisted of two completed exchanges (Cashman and the first part of Dreyfus/Zephyr Cove) and four ongoing exchanges (Del Webb, Permabilt/American Land Conservancy, Falcon Point, and Volkmar).

On February 3, 1997, the Bureau provided the Office of Inspector General with its final response regarding Recommendation A.3 of the July 1996 audit report.³ The response stated

³The response memorandum was processed through the Assistant Secretary for Land and Minerals Management and was signed by the former Deputy Director for the Director, Bureau of Land Management.

that the review team had completed its work and had “found that there are sufficient guidance and controls in Nevada District offices and the State Office to conduct exchanges” and that the Bureau was “confident that the case work being conducted today follows written guidance and the files are being well documented.”

Based on our followup review of the same exchanges, we found that the applicable laws, regulations, and Bureau policies and procedures were not adhered to consistently and that significant decisions to deviate from procedural requirements, which affected land valuations, were not fully justified and documented in the exchange files. Moreover, we noted instances in which, in our opinion, acquired lands were not valued in accordance with recognized standards. Specifically, for the transactions analyzed by the Bureau’s review team, we noted the following:

- Substantive deficiencies existed relating to the appraisal and valuation of the private lands for both the Cashman and Dreyfus/Zephyr Cove exchanges, although the review team reported that “lands acquired and disposed of by exchange are valued in accordance with approved standards” and that “the appraisal reports reviewed by the TPR Team [review team] were prepared in accordance with the regulations and the Uniform Appraisal Standards for Federal Land Acquisitions.” In particular, we found that the private lands were not valued on the basis of their “as is” condition and existing development potential. Instead, the appraisals valued these lands based on the appraisers’ assertions that it was likely that use permits could be obtained or that land use restrictions could be overcome to allow the property to be developed with a more profitable “highest and best use.” However, we concluded that these assertions were not substantiated by credible evidence, as required by the “Standards.” As a result of the acceptance of the unsubstantiated assertions, we believe that the lands acquired in these two exchanges were substantially overvalued and that the Government lost about \$12.3 million on these exchanges.

Specifically, we found that the appraised value of the Cashman property was based on the appraiser’s assertion that it was “legal and likely” that Clark County would approve a use permit for a 650-lot subdivision on a portion of the property, but comments of a Clark County planning official were the only support for this assertion. However, based on our

“The “Standards” states that (1) a property must be valued based on its highest and best use but that the proposed highest and best use “cannot be predicated upon potential uses that are speculative and conjectural” (Standard No. A-3); (2) a more profitable use that is precluded by existing zoning restrictions or regulations should not be considered unless the appraiser demonstrates that there is a reasonable possibility that zoning would be changed or permits would be issued by the regulating authority (Standard No. A-23); (3) before it can be concluded that any use of the property is its highest and best use, that use must be “physically possible, legally permissible, financially feasible, and must result in the highest value” (Standard No. B-1. 14); (4) the appraiser must investigate, analyze, and discuss the probability of obtaining a rezone of the property or the issuance of a permit by which he concludes that it is appropriate to employ a more profitable highest and best use (Standard No. B-1. 14); and (5) typical methods of investigating the probability of a rezone or permit issuance include interviews with zoning administrators and members of the legislative body that make final zoning decisions, a review of rezoning activity of nearby property, determining neighborhood attitudes concerning rezoning and permit issuance, and analyzing provisions of land use planning documents (Standard No. B-3).

review of Clark County's land use plan for the area and other documentation and on our discussions with the Nevada State Water Engineer, we found that a 650-lot subdivision could not be built on the Cashman property because the water supply required to serve such a development was unavailable. Further, we found that the Clark County Board of Commissioners denied a use permit for a smaller 243-lot subdivision on the nearby Deer Creek property in June 1995, based in part on concern about the availability of water.⁶ Thus, we concluded that there was no credible evidence to support the assertion that a use permit allowing development of a 650-lot subdivision on the Cashman property could be obtained from Clark County, as required by the "Uniform Appraisal Standards for Federal Land Acquisitions." Because the Bureau accepted this unsubstantiated assertion, the approved exchange value of the private land was \$8.5 million, which was \$2.5 million more than the amount initially approved by a Government appraisal review team.

We also found that the appraisals of the Dreyfus/Zephyr Cove property were based on the appraiser's assertion that the Tahoe Regional Planning Agency would allow the existing single parcel of land to be subdivided into five separate parcels and sold as separate lots, but the only support for this assertion was a letter from the Tahoe Regional Planning Agency's legal counsel. However, based on our review of the Tahoe Regional Planning Agency's ordinances, land use plans, and planning records and on our discussions with the Agency's legal counsel, we concluded that such a subdivision of land was not permissible under the Agency's Code.⁷ Further, from our review of Tahoe Regional Planning Agency records and our discussions with the proponent's appraiser and consultant, we found no documentation supporting that the Agency had approved any such residential subdivisions. Therefore, we concluded that the asserted development potential of the Dreyfus/Zephyr Cove property was not substantiated by credible evidence, as required by the "Standards." Because the Bureau accepted this unsubstantiated assertion, the approved exchange value of the portion of the

⁶Our review of documents that governed and restricted development of the Cashman property included Clark County's Mt. Charleston Comprehensive Land Use Plan: Clark County Ordinance 1402 (dated July 21, 1992); Title 28 of the Clark County Code ("Subdivisions"); the Nevada State Engineer's Amended Order No. 1054; and the Nevada State Engineer's February 4, 1993, letter to the Clark County Department of Comprehensive Planning.

⁷The owner of the Deer Creek property challenged the denial of the Board of County Commissioners of its application for a use permit in the District Court of Nevada. The County successfully argued that the Board's decision was consistent with the Mt. Charleston Comprehensive Land Use Plan, and on October 12, 1995, the District Court affirmed the Board's denial of a use permit for the Deer Creek property.

⁸The Agency's legal counsel told us that subdividing any land within the Tahoe Basin for the purpose of selling the resultant lots for residential development is not permissible under the Agency's Code, and we verified that the Agency's restriction on residential subdivisions had been in place since at least 1987. The Agency's legal counsel stated that she used "poor wording" to describe the development potential of the Dreyfus/Zephyr Cove property in her July 18, 1996, letter.

private property acquired by the Bureau was \$37.8 million, which was \$9.8 million more than the \$28 million price the exchange proponent paid for the entire property?

- For the Del Webb exchange, we found that the Bureau's Washington Office did not fully conform to established standards, procedures, and controls for appraisals and land valuations and did not justify or document the propriety of its actions. Our findings relative to the Bureau's processing of this exchange were discussed in detail in our March 1998 report on the Del Webb land exchange. Generally, we concluded that the Bureau's Washington Office (1) allowed Del Webb to use an appraiser that was not preapproved by the Nevada State Office, which was not in accordance with established State of Nevada procedures and practices; (2) allowed the Del Webb appraiser to perform a development-based appraisal of the selected Federal land, which was not in accordance with the "Standards," which required that comparable sales be relied on when adequate sales data were available; and (3) relieved the Nevada State Chief Appraiser of his appraisal review responsibilities for this exchange, which was contrary to the Statewide procedures and guidance in the Bureau Manual. In addition, the Bureau issued a contract for an appraisal review to a firm nominated by Del Webb. As a result, if the Bureau had not obtained a second appraisal, the Government would have lost \$9.1 million on the Federal land selected for exchange because the development approach was used in the initial appraisal.

The State Chief Appraiser said that he believed extensive reliance on the development approach was not appropriate for this exchange because the "Standards" states a clear preference for the use of comparable sales when adequate sales data are available. According to Section A-8 of the "Standards," the development approach should not be used when comparable sales are available because the development approach is "highly speculative, prone to error, and reflects not so much value as the highest price a developer can afford to pay and still earn the desired profit." The State Chief Appraiser said that he deemed the development approach to be inappropriate because he believed that comparable sales were available for use in valuing the property. The State Chief Appraiser's position in this matter was subsequently validated by a second appraisal firm, contracted for by the Bureau, which also determined that the comparable sales approach should be relied on for estimating the value of the selected Federal land. The second appraisal report commissioned by the Bureau valued the Federal land at \$52.1 million, which was significantly higher than the \$43 million value determined by the appraisal firm hired by the proponent. Given these circumstances, we believe that the Government would have lost \$9.1 million had the second appraisal not been obtained.

- On April 25, 1997, the Las Vegas Field Office acquired three parcels of land within the Las Vegas urban area for \$3.4 million as part of the Dreyfus/Zephyr Cove exchange. However, we believe that the decision to acquire these lands was not in compliance with the Code (43 CFR 2200.0-6(g)), which states, "The authorized officer shall consider only those

⁸The proponent purchased the entire Dreyfus/Zephyr Cove property for \$28 million in July 1996 for purposes of exchange. The Bureau acquired the land only for \$37.8 million in a two-phased exchange in October 1996 and April 1997.

exchange proposals that are in conformance with land use plans or plan amendments.” The Bureau’s notice of decision for this exchange stated that the lands to be acquired “have high value for wildlife habitat and public recreation.” However, we found that these parcels were located between existing residential subdivisions and Federally owned land that was identified for disposal in the Bureau’s pertinent land use plan for the area, the Clark County Management Framework Plan, dated 1984. Regarding the Federally owned land identified for disposal, the Plan stated, “The lands are not identified as needed for any Federal program. ... The problems of illegal occupancy, dumping, and other trespass are rampant, and would be eliminated by disposal. Retention of these lands puts the Bureau in the de facto position of being an urban planning agency, for which it is ill equipped.” Consequently, we concluded that there was no discernible mission-related purpose documented to reasonably support the acquisition of the adjacent parcels of land.

- The Nevada State Office allowed a U.S. Forest Service regional appraiser to review the appraisal report and to approve the land values for the private property included in the first Dreyfus/Zephyr Cove exchange transaction, an action that was contrary to requirements contained in the Bureau Manual. Specifically, Section 1203, Appendix 1, of the Manual, which was in effect at the time of the review, limited the delegation of authority for reviewing and approving exchange values to the “State Chief Appraiser only.” This action was also contrary to the Bureau review team’s finding that “the delegated official [State Chief Appraiser] reviews each appraisal report and approves the value.” A member of the Bureau’s review team said that the team initially concluded that land exchange values could be approved only by the State Chief Appraiser or the State Director but that the issue was not included in the final technical procedures report based on consultations with the Bureau’s Washington Office appraiser, who also assisted in writing the team’s report.

We also noted that a private citizen protested this exchange partially because he questioned the Bureau’s authority to redelegate its appraisal review and approval authority to the U.S. Forest Service. This protest was dismissed by the Assistant Secretary for Land and Minerals Management in an October 7, 1996, dismissal notice, which stated that the Bureau’s exchange regulations “only require that an appraisal report be reviewed by a qualified appraiser” and that “regulations were followed in assigning responsibility for appraisal review of the offered lands to the Forest Service Review Appraiser.” The dismissal notice further stated that the Assistant Secretary’s office “analyzed [the] protest to this exchange, and have determined that BLM [Bureau of Land Management] regulations and procedures were followed in processing this transaction.” However, we found that Bureau procedures delineated in Section 1203 of the Bureau Manual restricted appraisal review and approval authority to the State Chief Appraiser only.

- The Las Vegas Field Office issued notices of decision to proceed with the Del Webb, Dreyfus/Zephyr Cove, and Permabilt/American Land Conservancy exchanges before all of the land appraisals and other required analyses were completed, which was contrary to

requirements of the Code of Federal Regulations (43 CFR 2201).⁹ The Bureau's review team did not identify this area of noncompliance in its review report but instead stated that "[l]and exchanges in Nevada are processed in full accordance with applicable laws, regulations, and BLM [Bureau of Land Management] procedures."

On February 11, 1997, after the notices of decision and the review team's report were issued, the Bureau issued Instruction Memorandum No. 97-74, which reaffirmed that the Bureau's policy and regulations required appraisals and all other documentation to be completed before a notice of decision was issued and to be available for public inspection during the subsequent comment period. However, we found that the Las Vegas Field Office did not fully comply with this instruction. While the notices for the Del Webb and Permabilt/American Land Conservancy exchanges were reissued after appraisals and other required documents were completed and approved, the second phase of the Dreyfus/Zephyr Cove exchange was completed on April 25, 1997, without a new notice of decision and opportunity for public review. We believe that the Field Office's continued noncompliance with Bureau regulations and Instruction Memorandum No. 97-74 was significant because new offered land was added to the second phase of the exchange and appraisals were completed and approved subsequent to the issuance of the first notice on May 20, 1996. Because the regulations and the instruction were not properly followed, the Field Office's determination that the proposed exchange was in the public interest was not properly substantiated at the time the exchange was announced, and the public did not have the full opportunity to review and analyze relevant exchange data, which, in our opinion, may have adversely impacted the public's ability to prepare meaningful protests within the 45-day period established in the governing regulations (43 CFR 2201.7-1(b)).

Regarding the Deer Creek exchange, which the review team did not analyze, we noted that a significant value dispute existed between the exchange proponent (the American Land Conservancy) and the Government's appraisal review team.¹⁰ Specifically, the proponent wanted more than \$12 million for the private land, whereas the review team established an approved value of about \$4.6 million for the property. The State Director's authority to conduct bargaining over the disputed appraised value was subsequently redelegated to U.S. Forest Service officials. The Bureau Manual (Section 1203, Appendix 1, page 54) states that the Secretary's authority to "approve all actions, subject to the title opinion of the Field or Regional Solicitor, in all matters relating to the exchange of lands" is delegated to the State Director. In addition, our Office of General Counsel said that (1) delegations to outside entities are permissible only "where the agency retains and exercises its power to review and make the ultimate decisions with respect to the findings or conclusions of the

⁹The Code (43 CFR 2201.7-1(a)) states that a decision to approve an exchange is required to be made "upon completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations."

¹⁰The review team consisted of the Bureau's Nevada and Arizona Chief Appraisers and the U.S. Forest Service's Intermountain Region Chief Review Appraiser.

outside entity” and (2) “the delegation will be deemed improper if the agency simply ‘rubberstamps’ the work product of the outside entity.”

In reviewing the exchange file and discussing the redelegation and bargaining with Nevada State Office officials, we found that the Bureau provided only a cursory review of the conclusions reached by Forest Service officials before accepting these conclusions and proceeding with the exchange. For example, despite the fact that the appraisals valued the land using the development approach and that the Forest Service’s negotiations revolved around several disputed financial and economic factors used by the appraisers and appraisal reviewers under this approach, we found that the Nevada State Office did not have the Forest Service bargaining team’s conclusions reviewed by the State Chief Appraiser or any other Government appraiser. In addition, we noted that the Nevada State Office accepted title to the property on March 19, 1996, only 1 day after the Forest Service provided the Bureau with a copy of its bargaining agreement,” thus limiting the possibility of an adequate and effective review by the State Chief Appraiser and State Office management. Finally, we found that both of these actions were consistent with verbal agreements between the Bureau and the Forest Service as described in the bargaining agreement, which stated, “It was the understanding of both agencies that the FS [Forest Service] would represent the Federal Government in the dispute resolution and in completing the remaining work associated with this transaction.” As such, we concluded that the Bureau did not provide an adequate and effective review of the Forest Service’s negotiation documentation and appraisal review. Consequently, we believe that the redelegation to the U.S. Forest Service without adequate and effective review by the Bureau was an improper action that resulted in a significant loss to the Government because the proponent subsequently received \$10.5 million for the acquired lands, which was about \$5.9 million more than the \$4.6 million value determined to be appropriate by the Government’s appraisal review team.¹² The redelegation of Bureau authorities and responsibilities to outside entities is discussed further in the paragraphs that follow.

Land Exchange Handbook. On August 14, 1997, the Bureau issued its Land Exchange Handbook (Bureau of Land Management Manual Handbook H-2200-1, Release No. 8/4/97), which provided detailed information regarding the land exchange process. However, we noted that this document included certain procedural changes related to appraisal reviews and dispute resolutions which, in our opinion, weaken controls over a critical aspect of the exchange process and appear to be inconsistent with the requirements of the Federal Land Policy Management Act of 1976 or applicable regulations (43 CFR 2200) as follows:

“The Forest Service’s bargaining agreement described the bargaining process used, the principal appraisal issues addressed in negotiations, and the manner in which these issues were resolved to arrive at an exchange value acceptable to both the exchange proponent and Forest Service officials.

¹²The U.S. Forest Service’s involvement in the Deer Creek exchange is included in the August 1998 audit report “Forest Service, Humboldt-Toiyabe National Forest, Land Adjustment Program, Fiscal Years 1990 to 1997, Sparks, Nevada” (No. 08003-02-SF), issued by the U.S. Department of Agriculture’s Office of Inspector General.

- Appraisal Review. Before April 21, 1997, the Bureau Manual limited delegated authority for reviewing and approving land exchange values to the “State Chief Appraiser only.” Based on our analyses of the exchange process, we considered this limitation on appraisal review and approval authority to be the most critical organizational control instituted by the Bureau to ensure compliance with the legal requirement (the Federal Land Policy and Management Act of 1976) that exchanges must be for equal value. However, the Bureau’s Washington Office issued Instruction Memorandum No. 97-113,¹³ which amended the Bureau Manual to allow “other qualified federal review appraisers,” including those working for agencies outside the Department of the Interior, to perform the critical appraisal review and approval function. The revised delegation of authority was subsequently expanded and made permanent in Chapter 7 of the Handbook, which states that a “BLM [Bureau of Land Management] staff appraiser, a qualified reviewer from another Federal agency, or a contract review appraiser” can review appraisals and approve market values. (Emphasis added.) Thus, the Handbook guidance allows Bureau officials to proceed with an exchange based on appraised land values determined entirely by non-Bureau appraisers without the appraisal having been reviewed and approved by a Bureau appraiser, such as the State Chief Appraiser.

According to the Instruction Memorandum, the Bureau’s intent in revising the delegation of authority for reviewing appraisals and approving exchange values was to allow the sharing of agencies’ scarce appraisal resources while retaining final decision making by the Bureau. In support of this, the Handbook states that “the decision to accept the [appraisal] review or approve the appraised value is a BLM [Bureau of Land Management] decision that cannot be delegated outside the agency.” However, we concluded that this control would not be effective because the state directors or field office managers authorized to make the final decisions are not likely to be trained and qualified appraisers. In our opinion, Bureau decisions concerning the acceptability of appraisals and exchange values should be made based only on the advice of Bureau appraisers who, by virtue of their position, are expected to have an interest in ensuring compliance with the Federal Land Policy and Management Act’s requirement for fair and equal value exchanges and the professional education, training, and experience necessary to determine when an appraised value satisfies this requirement.

We believe that the changes in delegated authority implemented through the Handbook significantly weaken the Bureau’s controls over the valuation process. Moreover, given the recurrence of the deficiencies in the Bureau’s exchange program disclosed by our audits, we believe that the Bureau should be implementing more management controls rather than instituting changes that result in the lessening of critical existing controls. Accordingly, we believe that the Handbook and Memorandum No. 97-113 should be revised to ensure that any appraisal review reports submitted by individuals not employed by the Bureau are reviewed and approved by the State Chief Appraiser.

¹³“Instruction Memorandum No. 97-113, “Roles and Responsibilities Regarding Value Determination for Bureau of Land Management (BLM) Land Exchanges,” was signed by the former Deputy Director and expires on September 30, 1998.

- Dispute Resolution. Chapter 8 of the Handbook allows exchange parties to use bargaining or other processes “in place of an appraisal” to resolve value disputes. The chapter further states that the other processes can “include discussion of factors or elements that are outside the normal appraisal process,” including subjective factors such as the “consideration of public benefits that result from the transaction.” However, these statements appear to be contrary to the Federal Land Policy and Management Act. The Act and its implementing regulations require that bargaining and other processes be used only to reconcile differences in appraisal values rather than as substitutes for appraisal. The Act (43 U.S.C. 1716(d)) contemplates the use of other processes to resolve value disputes only after an appraisal has been completed, providing that the parties submit the appraisal to arbitration or “[i]nstead of submitting the appraisal to an arbitrator ... the Secretary concerned and the other party or parties involved in an exchange may mutually agree to employ a process of bargaining or some other process to determine the values of the properties involved in the exchange.” Bureau regulations (43 CFR 2201.4(a)(1)) also make clear that the use of bargaining or other processes is not to be used in lieu of an appraisal but rather “shall contain a reference to all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.”

Neither the Bureau official responsible for finalizing the Handbook nor the Bureau’s Washington Office appraiser could identify a legislative or regulatory authority that would support the use of another process “in place” of an appraisal. Accordingly, we believe that the Bureau should revise its Handbook to make it consistent with the requirements of the enabling legislation and the exchange regulations.

Recommendation B. 1. The accounting reports of income and expenditures required by Section 2(e) of the Santini-Burton Act are prepared and submitted to Bureau headquarters for submission to the appropriate Congressional oversight committees.

Our July 1996 report stated that Bureau officials were unable to provide us with accounting reports of income and expenditures which were required by Section 2(e) of the Santini-Burton Act. The Bureau agreed with this recommendation, and on September 10, 1996, the Bureau’s Washington Office issued Instruction Memorandum No. 96-179, which directed its National Business Center to provide the required biannual accounting information to the Washington Office’s Legislative Affairs Group for transmittal to the appropriate Congressional committees. On September 23, 1996, the Washington Office amended the instruction to clarify that the accounting information should include cumulative Bureau receipts and U.S. Forest Service expenditures since the passage of the Santini-Burton Act. On April 14, 1997, the Assistant Secretary for Land and Minerals Management submitted the first such accounting reports to the Committee on Energy and Natural Resources. Accordingly, we consider the recommendation implemented.

Recommendation B. 2. The Nevada State Office uses the land sales process, except in compelling circumstances, when disposing of its Santini-Burton Act lands until the sales revenues generated closely approximate the Lake Tahoe Basin acquisition costs. Any

exchange proposals from that time should be closely monitored to ensure that the exchange is justified and that the costs incurred as a result of the Santini-Burton Act remain relatively nominal.

Our July 1996 report stated that the Nevada State Office exchanged rather than sold land within the sale area designated by the Santini-Burton Act. We concluded that this decision deprived the U.S. Treasury of \$7.8 million in revenues for repayment of incurred costs for acquiring land within the Lake Tahoe Basin. Before responding to this recommendation, the Bureau alternatively proposed to obtain legal guidance from the Office of the Solicitor regarding the disposal of Santini-Burton lands. We concurred with this approach, and the Bureau received the legal guidance in June 1997. The Solicitor stated that while the Bureau has the authority to dispose of land in the Santini-Burton area under other laws, the Santini-Burton legislation expressed a “strong preference for disposal by sale.” The Solicitor therefore advised the Bureau to dispose of lands in the Santini-Burton area by other than sale “only when doing so would not frustrate the Act’s purposes.” To ensure that the Bureau complied with this legislation, the Solicitor further advised the Bureau that it should “set forth in writing, as part of its decision-making documentation on non-sale disposals in the Santini-Burton area, persuasive reasons why the sale method is not being used.”

On August 8, 1997, the Nevada State Director issued guidance to the Las Vegas Field Office that public land within the boundary established by the Santini-Burton Act would be available for sale only, utilizing competitive procedures, and that any exceptions to this policy would require written concurrence of the State Director. Only one of the exchanges actively being processed by the Las Vegas Field Office, the Volkmar exchange, sought to acquire Santini-Burton Act land. After we provided the preliminary draft of our report to the Bureau in February 1998, the Las Vegas Field Office notified the Volkmar exchange proponent on March 4, 1998, that the Santini-Burton Act land selected would be excluded from the exchange. Accordingly, we consider the recommendation implemented.

Recommendations

We recommend that the Director, Bureau of Land Management:

1. Identify the Bureau’s entire land exchange program as a material weakness in the Departmental Accountability Report.
2. Establish a “land exchange review team” which includes representatives who are non-Bureau personnel. This team should provide advice concerning compliance with established laws, regulations, and procedures for all significant land exchanges before lands are acquired or disposed of through an exchange. Also, team members should possess the technical skills and proficiency, including a thorough knowledge of the appraisal process and the applicable appraisal standards, required to conduct an effective review of proposed exchanges.

3. Establish a moratorium on land exchanges in the State of Nevada pending establishment of the independent land exchange review team identified in Recommendation 2.

4. Ensure that appraisals are supported by credible evidence, as required by the “Uniform Appraisal Standards for Federal Land Acquisitions,” when the appraised value is based on an assertion that the property’s highest and best use is different from its current zoning or use.

5. Revise the Land Exchange Handbook and Instruction Memorandum 97-1 13 to ensure that all appraisal reports used in a land exchange are reviewed and approved by the State Chief Appraiser and to ensure that the described procedures for dispute resolution are consistent with the requirements of the Federal Land Policy and Management Act of 1976 and the Code of Federal Regulations (43 CFR 2200).

Bureau of Land Management Response and Office of Inspector General Reply

In the June 29, 1998, response (Appendix 5) to the draft report from the Director, Bureau of Land Management, the Bureau concurred with Recommendations 1 and 4, nonconcurred with Recommendations 3 and 5, and neither concurred nor nonconcurred with Recommendation 2. Also, the draft report was discussed in July 13 and 15 meetings between the Bureau and the Office of Inspector General. On July 24, 1998, the Bureau provided a supplemental response (Appendix 4), in which it concurred with Recommendations 1, 2, 4, and 5 and nonconcurred with Recommendation 3. Based on the responses, we consider Recommendations 1, 4, and 5 resolved but not implemented. Accordingly, the unimplemented recommendations will be forwarded to the Assistant Secretary for Policy, Management and Budget for tracking of implementation. Also based on the responses, we request that the Bureau provide additional information for Recommendation 2 and reconsider its response to Recommendation 3, which is unresolved (see Appendix 6).

Recommendation 1. Concurrence.

Bureau of Land Management Response. In its July response, the Bureau said that it would “identify the land exchange program as a material weakness” in the Departmental Accountability Report. The July response identified the Assistant Director, Minerals, Realty, and Resource Protection, as the official responsible for implementation and September 30, 1998, as the target date for submittal of the plan required by the Accountability Report.

Office of Inspector General Reply. Based on the Bureau’s response, we consider the recommendation resolved but not implemented.

Recommendation 2. Concurrence.

Bureau of Land Management Response. In its June response, the Bureau said that it had “taken actions to improve the land exchange program,” but it did not make a specific commitment on the establishment of a land exchange review team and the possible roles, responsibilities, or organization of such a review team. In the July response, the Bureau stated that it had “prepared and submitted to the Department for review a proposal to establish a National Land Exchange Evaluation and Assistance Team” to review land exchange actions and decisions and that the Bureau would proceed with implementation of the Team upon concurrence of the Department. However, the Bureau also stated that its proposal “does not include non-Bureau representatives as members of the Team” because such a proposal “would create potentially troubling issues regarding compliance with the Federal Advisory Committee Act (FACA), Departmental delegations ..., appropriate handling of confidential information, and other issues that might arise if the BLM [Bureau of Land Management] used non-federal personnel for performing functional responsibilities in the land exchange process.” The Bureau further stated that it will “continue to evaluate options to consider other means of increasing objective input in the review of land exchanges,” such as “participation by the FACA chartered Resource Advisory Councils in the review of land exchange actions, or other federal agency representation on land exchange program evaluation teams.” Further, the Bureau announced the formation of the Team in an August 14, 1998, press release.

Office of Inspector General Reply. Although the Bureau concurred with our recommendation, it did not commit to include independent representation on the National Land Exchange Team. Regarding the Bureau’s comments on the use of “non-federal personnel” on the Team, it should be noted that we did not suggest the use of “non-federal personnel.” Further, at our July 13, 1998, meeting with the Director, we suggested that one method for ensuring the independence of the Bureau’s National Land Exchange Review Team would be to include Team members who are employees of other Departmental bureaus or other Federal agencies or departments that do not benefit from the land exchange. We believe that inclusion of non-Bureau representation on the National Land Exchange Team is the most viable method for the Bureau to obtain consistent and unbiased advice on land exchanges. In regard to the Federal Advisory Committee Act, the Office of Inspector General’s General Counsel advised that the Act would not be applicable provided that the Team was composed exclusively of Federal employees. The Act (5 U.S.C., App. 2, section 3) states that the term “advisory committee” excludes “any committee which is composed wholly of full-time officers or employees of the Federal Government.” Accordingly, we believe that the Bureau should obtain written advice from the Office of the Solicitor regarding any legal limitations on the participation of non-Federal personnel on the National Land Exchange Team.

We also believe that the Bureau’s suggested use of Resource Advisory Councils to review land exchange actions could help ensure that land exchanges are consistent with existing land use plans. However, the most significant land exchange problem identified by our followup audit was that lands exchanged were not properly valued in accordance with approved standards (see discussion of the Cashman, Dreyfus/Zephyr Cove, and Del Webb exchanges on pages 8 to 10 of the report). Accordingly, in order for the Resource Advisory Councils

to be a viable option as an independent reviewer of land exchange actions, membership of the Councils must include individuals who “possess the technical skills and proficiency, including a thorough knowledge of the appraisal process and the applicable appraisal standards, required to conduct an effective review of proposed exchanges.” In addition, the Bureau raised concerns about the use of non-Federal personnel regarding compliance with Departmental delegations, handling of confidential information, and other issues.

Our insistence on the need for an independent review of land exchange actions is based on the Bureau’s continuing inability to ensure that exchanges are accomplished in accordance with prescribed regulations and procedures. Specifically, in our July 1996 audit report “Nevada Land Exchange Activities, Bureau of Land Management,” we found that the Nevada Office did not consistently follow prescribed land exchange regulations or procedures and ensure that fair and equal value was received in completing three of the four exchanges we reviewed. In response to the audit, the Bureau stated that its Washington Office would “review the Nevada BLM [Bureau of Land Management] exchange process to assure that adequate controls are in place to comply with applicable laws, regulations and BLM procedures.” After completing its review of Nevada land exchange procedures, the Bureau’s Washington Office reported that “there are sufficient guidance and controls in the Nevada District offices and the State Office to conduct exchanges” and that the Bureau was “confident that the case work being conducted today follows written guidance and the files are being well documented.” However, as discussed in our report (pages 6 through 13), we found that the Bureau had not identified significant deficiencies in the processing of Nevada land exchanges that were the subject of the technical procedures review performed by the Bureau’s Washington Office. These deficiencies resulted in an \$18.2 million loss to the Federal Government and the acquisition of \$3.4 million of land that was not in conformance with the current land use plan. Further, as discussed in our advisory report on the Del Webb land exchange, we found that the Bureau’s Washington Office did not follow established standards, procedures, and controls for appraisals and land valuations and did not justify or document the propriety of its actions, which almost resulted in another \$9.1 million loss to the Federal Government. Accordingly, we believe that there is a need for independent representation on the Bureau’s National Land Exchange Review Team for us to consider the recommendation fully resolved. In that regard, we request the following information: (1) the Team’s charter showing the specific authorities and responsibilities given to the Team, including information on the criteria by which the Bureau will determine which exchanges will be referred to the Team for review, and (2) the membership of the Team, including information on the qualifications of non-Bureau members.

Recommendation 3. Nonconcurrence.

Bureau of Land Management Response. In its June response, the Bureau disagreed with the recommendation for a full moratorium but stated that it would continue the existing limited moratorium on new exchanges in the Las Vegas area. In the July response, the Bureau stated that it “does not agree to a moratorium on land exchanges in Nevada. However, BLM [Bureau of Land Management] does not plan on processing additional land exchanges in the Las Vegas area until the existing priority exchanges are substantially

completed and the National Land Exchange Evaluation and Assistance Team, as identified above [Recommendation No. 2], is approved by the Department and established and available to assist the BLM Nevada State Director.” The Bureau also stated that existing priority exchanges would be processed subject to recently established review procedures and that no additional lands would be acquired in the Las Vegas area unless they were consistent with the final Las Vegas Resource Management Plan expected to be effective in October 1998.

Office of Inspector General Reply. We acknowledge the reported actions taken as efforts to improve management oversight of land exchange activities and the appraisal process. However, we believe that a temporary moratorium on Nevada land exchanges, including any expansion of existing exchanges, is needed to ensure that no additional monetary losses occur prior to an independent land exchange review team being established to review such exchanges. As discussed in the report (pages 6 through 13) and in our reply to the Bureau’s response to Recommendation 2, previous reviews of Nevada land exchanges by the Bureau’s Washington Office had not disclosed significant processing deficiencies that we found resulted in significant financial losses to the Federal Government. Further, the Bureau could amend the existing exchange agreements to add millions of dollars of additional offered and selected lands that were not part of the exchanges when the Bureau announced its partial moratorium on July 19, 1996. If the existing agreements are amended, the risk of additional losses could increase. Also, the length of the moratorium is within the Bureau’s control. The establishment and the empowerment of the Review Team identified in Recommendation 2 satisfy the conditions that led us to recommend a moratorium. Therefore, we request that the Bureau reconsider its response to the recommendation.

Recommendation 4. Concurrence.

Bureau of Land Management Response. In its June and July responses, the Bureau concurred with the recommendation, stating in the June response that it “will coordinate development of an appraisal course to be presented to BLM [Bureau of Land Management] appraisers, contract appraisers, and other agency appraisers involved in land exchange appraisals. The course will be developed and presented by the Appraisal Institute and the American Society of Farm Managers and Rural Appraisers. The course will focus on highest and best use, how to document ‘reasonable probability,’ and improving the effectiveness of the appraisal review function.” The Bureau also stated that its Washington Office would conduct followup reviews of the appraisal function during fiscal year 1999. The July response identified the Assistant Director, Minerals, Realty, and Resource Protection, as the official responsible for implementation and June 1, 1999, as the target date for implementation.

Office of Inspector General Reply. Based on the Bureau’s response, we consider the recommendation resolved but not implemented.

Recommendation 5. Concurrence.

Bureau of Land Management Response. In its June response, the Bureau did not agree to revise the Land Exchange Handbook and Instruction Memorandum 97- 113, stating that the current delegation of authority, which allows the State Director “to re-delegate authority for approving market value to the State Office Chief Appraiser or other qualified review appraisers” from other agencies or the private sector is a “practical way to handle appraisal review workload and is also consistent with” the exchange regulations.

The Bureau also stated that it “disagrees with the recommendation regarding ‘bargaining.’” However, in the July response, the Bureau said that it will “revise the Land Exchange Handbook to clarify that all appraisals used in a land exchange will be subject to administrative acceptance by a BLM [Bureau of Land Management] State Chief Appraiser or an officially designated Bureau Appraiser prior to being submitted to the authorized officer.” The Bureau further stated, “The Handbook will also be revised to clarify that bargaining will only be conducted after an appraisal has been prepared and the Bureau and exchange proponent have been unable to reach agreement on the appraised value.” The July response identified the Assistant Director, Minerals, Realty, and Resource Protection, as the official responsible for implementation and September 30, 1998, as the target date for implementation.

Office of Inspector General Reply. Based on the Bureau’s response, we consider the recommendation resolved but not implemented.

General Comments on Audit Report

In the Bureau’s July 24, 1998, supplemental response (Appendix 4) to the draft report, the Bureau generally concurred with the recommendations and agreed to take corrective actions. However, the supplemental response did not alter the Bureau’s June 29, 1998, response (Appendix 5) regarding the Bureau’s nonconcurrence with the audit report findings and conclusions and the monetary impacts included in Appendix 1 of the report. The Bureau expressed similar statements of nonconcurrence in its February 24, 1998, review comments on the preliminary draft of the advisory report for the Del Webb land exchange and its March 26, 1998, review comments on the preliminary draft of this audit report. We considered each of the Bureau’s earlier comments and made changes to the reports as appropriate, but we did not alter our conclusions. The most significant areas of disagreement identified in the Bureau’s responses and our replies to those comments are presented in the paragraphs that follow.

Bureau Actions Taken To Improve Land Exchange Program

Bureau of Land Management Response. In the June response, the Bureau stated, “We want to focus attention on the larger management issues involved in the Bureau’s land exchange program, and at the same time respond to many of the concerns addressed in the draft Audit Report.” The Bureau identified issues that it said “appear to fall within several

broad areas of concern.” These areas were (1) management oversight, (2) land exchange policies and procedures, and (3) appraisal procedures. The Bureau then summarized 20 actions that it had taken or was planning to take to improve the overall management oversight of its land exchange program, ensure compliance with land exchange policies and procedures, and improve administration of the appraisal function (Appendix 5, pages 1 through 4).

Office of Inspector General Reply. We acknowledge the Bureau’s reported efforts and believe that these actions have the potential to improve controls over Nevada land exchange activities and the appraisal process. However, we found that some of the Bureau’s actions which were implemented prior to or during our followup audit did not ensure that land exchanges were processed in accordance with established procedures. For example, in its June response, the Bureau stated that it had “completed an Alternative Management Control Review (AMCR) of the Nevada land exchange program in 1997.” This review was undertaken as a corrective action to resolve Recommendation A.3 from our July 1996 audit of Nevada land exchange activities and was therefore a primary focus of our followup audit. Generally, the Bureau’s review concluded that the Nevada District Offices and the Nevada State Office had sufficient guidance and controls to conduct exchanges, that exchanges were being processed in accordance with written guidance, and that files were being well documented. However, we found that the applicable laws and regulations and Bureau policies and procedures were not adhered to consistently and that significant decisions to deviate from procedural requirements which adversely affected land valuations were not fully justified and documented in the exchange files. Moreover, we noted instances in which, in our opinion, acquired lands were not valued in accordance with recognized standards (pages 8 through 10). Our concern that the Washington Office’s Alternative Management Control Review did not identify the significant continuing problems with Las Vegas area land exchanges was a primary factor in our decision to recommend the establishment of an independent land exchange review team and a temporary moratorium on Nevada land exchanges (Recommendations 2 and 3 in this report).

Appraisal Issues

Bureau of Land Management Response. In its June response, the Bureau stated:

The BLM [Bureau of Land Management] takes particular exception to the implication in Appendix 1 of the draft Audit Report that the appraisal decisions for several exchange transactions resulted in lost revenues of \$18.2 million. The appraisal reports on the Cashman and Dreyfus/Zephyr Cove land exchanges were prepared by highly qualified appraisers, and reviewed and approved by BLM [Bureau of Land Management] review appraisers. The appraisers and review appraisers diligently gathered, verified, and analyzed the best information available, in reaching their conclusion of value. We believe the review appraiser performed the due diligence necessary to reach a conclusion of value. [See Appendix 5, page 4.]

Office of Inspector General Reply. The Bureau's statement that the Dreyfus/Zephyr Cove appraisal was reviewed and approved by Bureau review appraisers is not accurate. As discussed in our report (page 11), we found that the Nevada State Office allowed a U.S. Forest Service regional appraiser to review the appraisal report and to approve the land values for the private property included in the first Dreyfus/Zephyr Cove exchange transaction, an action that was contrary to requirements contained in the Bureau Manual. Further, we found (pages 8 through 10) that private lands were not valued on the basis of their "as is" condition and on existing development potential but rather on unsubstantiated assertions that use permits could be obtained or that land use restrictions could be overcome to allow the property to be developed with a more profitable "highest and best use."

Bureau of Land Management Response. The Bureau stated:

The draft Audit Report finds that 'there was no credible evidence to support the assertion that a use permit allowing development of a 650-lot subdivision on the Cashman property could be obtained' and therefore the property was overvalued by \$2.5 million. The appraisers and reviewers made a diligent effort to thoroughly and professionally evaluate all of the valuation issues related to the Cashman property. The appraisal and the review statement for the appraisal, documents the appraisers' and the review team's deliberations regarding these issues. After an examination of the comparable sales and discussions with the Clark County Planning and Zoning staff and the engineering contractor, the appraisers and review appraisers concluded there was a reasonable likelihood that water could be obtained and developed and that potential buyers would conclude the same. The appraisers knew water was a problem, but after looking into the issue and considering information presented by zoning officials and engineering consultants, they decided that the availability of water was not an insurmountable problem. [See Appendix 5, pages 7 and 8.]

Office of Inspector General Reply. As discussed in our report (page 9), we found that the appraisers did not consider specific credible evidence indicating that it was unlikely that a use permit could be obtained for the development scenario on which the appraisal was based and that they relied instead on the verbal statements of a local planning official as their exclusive support. Further, while the documentation we obtained as part of our review of this exchange confirmed that the review appraisers did deliberate over whether or not the appraisal report and its value of \$8.5 million were adequately supported and prepared in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions," we found that this documentation also demonstrated that the appraisers ultimately approved an appraisal that was not in compliance with the "Standards." Specifically, in a November 28, 1995, facsimile sent just 6 days before he approved the appraisal, the Bureau's review appraiser discussed the fact that the appraisal report was still based on a number of unknowns and speculation and stated, "If management feels it is appropriate, the \$8.5 [million] could be the agreed upon value. The favorable outcome or resolution of all the negatives listed above are within the realm of possibility, but are too speculative to support a Uniform

Appraisal Standards determination of FMV [fair market value].” (Emphasis added.) Further, in a March 29, 1996, message sent 2 days after the Bureau acquired the Cashman property for the approved exchange value of \$8.5 million, the U.S. Forest Service’s review appraiser stated, “It occurs to me that we need to be prepared to discuss why the appraisal was approved with bogus engineering information that the appraiser was not made aware of due to the 4:30 PM deadline that the reviewers were working under.”

Bureau of Land Management Response. The Bureau stated:

The draft Audit Report finds that ‘the asserted development potential of the Dreyfus/Zephyr Cove property was not substantiated by credible evidence’ and therefore the property was overvalued by \$9.8 million. The best available information from real estate professionals, attorneys, consultants, and the local zoning authority (Tahoe Regional Planning Agency) was used in the determination by the appraiser and review appraiser that there was reasonable probability the property could be divided. The BLM [Bureau of Land Management] accepted the assertion of development potential in accordance with the ‘Uniform Appraisal Standards for Federal Land Acquisitions’ which states, ‘... if the property is clearly adaptable to a use other than the existing use, its marketable potential for such use should be considered in determining the property’s fair market value.’ In many other areas, reasonableness of the determination of highest and best use may be ‘tested’ by indications of similarly approved development in the vicinity of a subject property. However, in the Lake Tahoe area this form of ‘testing’ is inconclusive due to the lack of similar properties. The draft Audit Report also fails to recognize at least two other conditions which influenced the disparity in value. First, the entire property was not acquired at one time and the appraisal reports and review approvals reflect the separate values of Phase I and Phase II as ‘stand-alone’ parcels. Second, Phase II of the exchange occurred almost a year after the exchange proponent acquired the entire property and during this time period sales data shows marked increases in the value of lakefront property. [See Appendix 5, page 8.]

Office of Inspector General Reply. As discussed in our report (pages 9 and 10), we found that the best available information was not used in the determination made by the appraiser and review appraiser that there was reasonable probability that the property could be divided. In this instance, we believe that the best available information was (1) the initial appraisal report submitted by the appraiser, which stated that “new subdivisions were generally prohibited” after 1980 and that “it would be very difficult to receive approval for a new residential subdivision on the subject property” unless the Tahoe Regional Planning Agency agreed that the property consisted of several legally existing parcels created prior to 1972; (2) the Tahoe Regional Planning Agency’s ordinances, land use plans, and planning records, which documented that the Agency’s Counsel did not recognize the existence of more than one legal parcel on the subject property, that the type of subdivision proposed in the final appraisal was not permissible, and that no similar subdivisions had been authorized;

and (3) that this property, including significant residential improvements with substantial value, was marketed for more than 1 year at an asking price of \$30 million and was purchased by the exchange proponent for \$28 million.

The Bureau stated that it accepted the asserted development potential of this property in accordance with the “Standards,” which states that “if the property is clearly adaptable to a use other than the existing use, its marketable potential for such use should be considered in determining the property’s fair market value.” However, the “Standards” immediately qualifies this requirement with the statement that the property’s value “cannot be predicated upon potential uses that are speculative and conjectural; as the Supreme Court has said: ‘Elements affecting value that depend upon events or combinations of occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable should be excluded from consideration, for that would be to allow mere speculation and conjecture to become a guide for the ascertainment of value.’” Further, as discussed in the report (page 8, footnote 4), the “Standards” requires the appraiser to show that any alternative use selected as the highest and best use is legally permissible.

In this case, the appraiser did not show that the proposed highest and best use was legally permissible in accordance with the Tahoe Regional Planning Agency’s land use plans and ordinances. In his initial appraisal report, the appraiser discussed the local regulatory restrictions on development of the property and stated that “it would be very difficult to receive approval for a new residential subdivision on the subject property.” The appraiser subsequently revised his appraisal report to conclude that the property could be subdivided into five individual residential parcels based on statements made in a letter provided by the Tahoe Regional Planning Agency’s legal counsel. However, based on our review of the Tahoe Regional Planning Agency’s ordinances, land use plans, and planning records and on our discussions with the Agency’s legal counsel, we concluded that such a subdivision of land was not permissible under the Agency’s Code for this or any other property in the Lake Tahoe Basin (see footnote 7).

The Bureau also stated that our report “fails to recognize at least two other conditions which influenced the disparity in value.” These conditions were that the Dreyfus/Zephyr Cove property was appraised and acquired by the government as two “stand-alone” parcels and that the second “stand-alone” parcel was acquired by the Government almost a year after the exchange proponent purchased the entire property. We agree that the two factors mentioned by the Bureau may have had some part in the \$9.8 million loss on this exchange. However, we concluded that the most significant valuation errors were associated with the appraisal used for the first phase of the exchange, in which the appraiser’s assertion that the entire parcel could be legally subdivided into five separate residential parcels was not substantiated by credible evidence. Based on the use of this assertion, the approved appraised value of the undeveloped 35.4 acres acquired by the Bureau in the first phase of the exchange was \$24.25 million, which closely approximated the \$28 million the exchange proponent paid for the entire 47.2-acre property. Had the appraisal not been based on the asserted legality of such a subdivision, we believe that the appraised value of the undeveloped portion of the

property (35.4 acres) as a “stand-alone” parcel would have been significantly less because of its limited development potential.

Bureau of Land Management Response. The Bureau stated:

The draft Audit Report finds that ‘the Bureau did not provide an adequate and effective review of the Forest Service’s negotiation documentation and appraisal review’ for the Deer Creek exchange and therefore the property was overvalued by \$5.9 million. The draft Audit Report recognizes that the value for this transaction was reached through a bargaining effort by a Forest Service bargaining team. It should be noted that the BLM [Bureau of Land Management] Nevada State Director had officially delegated these appraisal responsibilities to the Forest Service in March 1995. The authority to utilize bargaining or another process to resolve disputes over value is provided for by Section 3 (a) of the Federal Land Exchange Facilitation Act of 1988. The bargaining effort is based on an analysis of appraisal reports, assumptions made by the appraisers, the adequacy of market information, and the reasonableness of the conclusions of value. The Forest Service bargaining agreement clearly considered these factors. Any offer, settlement, or agreed upon value must be approved by a management official, which in this case was the BLM Nevada State Director, not the State Chief Appraiser. The BLM Nevada State Director accepted the negotiated value. The bargaining effort was successful in that the negotiated value was some \$2 million less than the value asserted by the exchange proponent. [See Appendix 5, page 10.]

Office of Inspector General Reply. As discussed in our report (pages 12 and 13), our issue was with the adequacy of the Bureau’s review of the Forest Service’s bargaining efforts rather than with the delegation to the Forest Service. The Bureau stated that the bargaining effort is to be based on an analysis of appraisal reports, appraisal assumptions and market information, and appraisal conclusions. Further, the Bureau stated that the Forest Service’s bargaining agreement clearly considered these factors and therefore was approved by the Nevada State Director. As discussed in this report (pages 12 and 13), we found that the Bureau provided no more than a cursory review of the Forest Service bargaining agreement and that no Government appraiser from either the Bureau or the Forest Service was consulted on the technical appraisal issues resolved through bargaining. We found that the only appraiser consulted as part of the bargaining effort was a private appraiser who provided advice on the disputed appraisal issues to the private exchange parties several months before the bargaining meetings were held. We also do not agree with the Bureau’s categorization of the bargaining effort as “successful,” considering that the Forest Service-bargained price of \$10.5 million was more than double the Bureau’s approved appraised value of \$4.6 million established by a Federal appraisal review team. Consequently, we believe that the redelegation to the U.S. Forest Service without adequate and effective review by the Bureau was an improper action that resulted in a significant loss to the Government.

Land Use Plan

Bureau of Land Management Response. The Bureau stated:

The draft Audit Report also suggests that an additional \$3.4 million of funds could have been put to better use since there was no mission-related purpose for the acquisition of three parcels of land in the Sunrise Mountain area as part of the Dreyfus/Zephyr Cove exchange. The environmental assessment and decision record for the Dreyfus/Zephyr Cove exchange clearly documented the determination of public interest in the acquisition of these offered lands adjacent to Sunrise Mountain. [See Appendix 5, page 4.]

Office of Inspector General Reply. Based on our review of the environmental assessment, the decision record, and the exchange case file, we concluded that the Bureau did not clearly document the specific public interest served by the acquisition of these parcels. Moreover, we found that the exchange case file did not have any documentation that would justify the Bureau's decision. After we asked staff why the Bureau planned to acquire this property, the Las Vegas Office placed a memorandum in the file which stated that the lands had recreational potential for development of parking lots, picnic areas, and trail heads. However, the author of this memorandum also told us that the Bureau had no plans as to when such improvements might be made.

Based on the documents reviewed, we concluded that the acquisition of the Sunrise parcels was not in conformance with the current plan, which identified the adjacent public land as being available for disposal. As discussed in our report (page 11), the Bureau's pertinent land use plan for the area stated that the adjacent public land was "not identified as needed for any Federal program. ... The problems of illegal occupancy, dumping, and other trespass are rampant, and would be eliminated by disposal." However, the Bureau's draft resource management plan indicated that the adjacent public land will no longer be available for disposal. As such, if the Bureau had determined that the current plan was outdated, that the problems of illegal occupancy and dumping on the adjacent land had been resolved, and that there was a specific need to acquire these new parcels, Bureau regulations provided a mechanism for accomplishing the acquisition. That is, the Bureau could have (1) amended the existing land use plan, as it is doing to accommodate the Permabilt/American Land Conservancy exchange, or (2) finalized the draft resource management plan, as with its efforts to accommodate the Del Webb exchange. However, the Bureau did not take either action and proceeded despite the provision of the Code of Federal Regulations (43 CFR 2200.0-6(g)) that states, "The authorized officer shall consider only those exchange proposals that are in conformance with land use plans or plan amendments."

Del Webb Exchange

Bureau of Land Management Response. The Bureau noted that the draft audit report included references to our previous advisory report on the Del Webb exchange and stated, "We strongly disagree with the concerns expressed in the Advisory Report and

suggestions that there could have been a \$9.1 million loss to the Federal government from this exchange.” The Bureau also stated that the Bureau’s decision to obtain a second appraisal of the selected Federal land demonstrated that appropriate management safeguards were in place and that the Bureau “takes particular issue with the implied criticism that there is something inappropriate about elevating decisions on high priority, high visibility and/or sensitive issues from a field organization to Headquarters.” (See Appendix 5, page 4.)

Office of Inspector General Reply. As stated in the advisory report (pages 3, 12, and 14) on the Del Webb land exchange, we believe that procedural safeguards established by the Nevada State Office, which were designed to ensure that fair value was established and that the appraisal was conducted in accordance with recognized Federal appraisal standards, were overridden by the Washington Office in February and March 1996 and that the exchange would have been consummated for \$9.1 million less had the Bureau not been subjected to external factors that exerted pressure on it to obtain a second appraisal. As such, we were not critical of the elevation of decisions to the Headquarters level but of the Washington Office’s nonconformance with established standards and controls without explanation or justification.

Notice of Decision

Bureau of Land Management Response. The Bureau stated:

The draft Audit Report concludes that Notices of Decision were issued on several land exchanges before appraisals and other required analyses were completed. This issue involves exchange transactions that predated discussions of the requirements of 43 CFR 2201.7-1 with the Department Solicitor in late 1996. The BLM [Bureau of Land Management] issued a clarification of Bureau policy by Instruction Memorandum 97-74, dated February 11, 1997. The BLM Nevada State Director subsequently provided supplemental guidance that Notices of Decision would not be published until all the required reports, including the appraisal, are complete and available for public inspection during the comment period. [See Appendix 5, pages 9 and 10.]

Office of Inspector General Reply. In our report (page 12), we acknowledge that the Bureau issued Instruction Memorandum No. 97-74 after the initial Notices of Decision for these three exchanges were signed. However, the memorandum primarily reaffirmed the requirements of the Bureau’s existing regulations. As such, the initial Notices of Decision were not in compliance with the Bureau’s exchange regulations, which state that a decision to approve an exchange is required to be made “upon completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations.” More significantly, the Washington Office’s technical procedures review team did not identify this noncompliance issue in its review report. Further, we found that the Las Vegas Field Office did not fully comply with the Bureau’s

instruction (page 12). While the notices for the Del Webb and Permabilt/American Land Conservancy exchanges were reissued after appraisals and other required documents were completed and approved, the second phase of the Dreyfus/Zephyr Cove exchange was completed on April 25, 1997, without a new notice of decision and public review opportunity. The Las Vegas Field Office's action of proceeding with the second phase of the Dreyfus/Zephyr Cove exchange without issuing a new notice of decision was therefore contrary to both the Bureau's regulations and Instruction Memorandum No. 97-74.

In accordance with the Departmental Manual (360 DM 5.3), we are requesting a written response to this report by November 6, 1998. The response should provide the information requested in Appendix 6.

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

We appreciate the assistance of Bureau personnel in the conduct of our review and the timeliness of the Bureau's response to our draft report.

CLASSIFICATION OF MONETARY AMOUNTS

<u>Finding</u>	<u>Lost Revenues</u>	<u>Funds To Be Put To Better Use</u>
Exchange Processing		
Exchange No. N-57877		
Fair Market Value	\$5,900,000 ¹	
Exchange No. N-59728		
Fair Market Value	\$2,500,000 ²	
Exchange No. N-6073 ¹		
Fair Market Value	\$9,800,000 ³	
Land Use Plan	<u> </u>	<u>\$3,400,000</u> ⁴
Total	<u><u>\$18,200,000</u></u>	<u><u>\$3,400,000</u></u>

¹Represents the amount by which the Deer Creek property acquired by the Bureau was overvalued because the Nevada State Office improperly redelegated the State Director's authority to bargain over a disputed appraised value to U.S. Forest Service officials.

²Represents the amount by which the Cashman property acquired by the Bureau was overvalued because the asserted development potential of the property was not adequately substantiated in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions."

³Represents the amount by which the Dreyfus/Zephyr Cove property acquired by the Bureau was overvalued because the asserted development potential of the property was not adequately substantiated in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions."

⁴Represents the exchange value of three parcels of private land acquired by the Bureau within the Las Vegas urban area. The parcels were located within the identified land disposal area of the Bureau's current land use plan. Therefore, the Bureau's acquisition of these parcels was not in conformance with the land use plan and was not in compliance with the Bureau's land exchange regulations (43 CFR 2200.0-6(g)).

**STATUS OF RECOMMENDATIONS AND
CORRECTIVE ACTIONS FOR AUDIT REPORT
“NEVADA LAND EXCHANGE ACTIVITIES,
BUREAU OF LAND MANAGEMENT”
(No. 96-I-1025)**

Recommendations	Status of Recommendations and Corrective Actions
A.1 Institute competitive procedures (sale or competitive exchange) into the land disposal process to the maximum extent practicable.	A. 1 Partially implemented. The Bureau agreed to implement the recommendation by developing a strategy to incorporate competitive procedures into the land disposal process. This required the evaluation of different approaches, the selection of an option, and the development and testing of a pilot project. However, we found that the pilot project had not been developed and tested.
A.2 Direct that all easements on Federal lands proposed for disposal be reviewed to verify grantee needs and that actions be taken to remove any easements that are not needed before Federal lands are exchanged or sold.	A.2 Implemented. The Bureau’s Washington Office issued Instruction Memorandum 97-08, which required all encumbrances on public lands considered for exchange or sale to be reviewed as part of the case-processing procedures.
A.3 Establish the controls necessary to ensure that land exchanges are processed in full accordance with applicable laws, regulations, and Bureau procedures.	A.3 Not implemented. The Bureau completed the control review and finalized its new land exchange handbook. However, we found that the conclusions that the Bureau reached as a result of its control review were not substantiated by the available evidence. We also found that the new Handbook contained guidance that appeared to be in conflict with applicable laws and regulations or that weakened Bureau controls over the appraisal and valuation process. In addition, the Bureau was not complying with existing controls over the appraisal and valuation process.
B. 1 Ensure that the accounting reports of income and expenditures required by Section 2(e) of the Santini-Burton Act are prepared and submitted to Bureau headquarters for submission to the appropriate Congressional oversight committees.	B. 1 Implemented. The Bureau’s Washington Office issued Instruction Memorandum No. 96-179, which directed its National Business Center to provide the required biannual accounting information, and the Assistant Secretary submitted the first such report to the appropriate Congressional oversight committee in April 1997.

Recommendations

B.2 Ensure that the Nevada State Office uses the land sales process, except in compelling circumstances, when disposing of Santini-Burton Act lands until the sales revenues generated closely approximate the Lake Tahoe Basin acquisition costs. Any exchange proposals from that time on should be closely monitored to ensure that the exchange is justified and that the costs incurred as a result of the Santini-Burton Act remain relatively nominal.

Status of Recommendations and Corrective Actions

B.2 Implemented. After receiving guidance from the Office of the Solicitor, the Bureau's Nevada State Director instructed the Las Vegas Field Office that public lands within the Santini-Burton Act land sale area should only be sold using competitive procedures. On March 4, 1998, the Las Vegas Field Office notified the Volkmar exchange proponent that the Santini-Burton Act land he had selected was being excluded from the exchange.

LAND EXCHANGES REVIEWED

Exchange		Transaction		Land Acquisitions		Land Disposals	
Number	Exchange Name'	Number	Date	Acreage	Value	Acreage	Value
Exchanges	With Completed Transactions						
N-57877	Deer Creek	1	11/13/95	1,013.49	\$1,600,000		
		2	12/04/95			105.12	\$1,810,000
		3	12/13/95	32.50	339,000		
		4	03/19/96	458.98	10,520,000		
		5	03/31/97			5.00	550,000
N-59728	Cashman	1	03/27/96	1,297.51	8,500,000	947.50	8,787,509
N-60167	Del Webb	1	07/29/97	5,328.00	10,990,000	922.00	11,452,639
N-60731	Dreyfus/Zephyr Cove	1	10/09/96	35.42	24,250,000	1,357.38	27,474,618
		2	04/25/97	138.94	17,435,000	969.54	14,364,075
Total Land Exchanged				8,304.84	\$73,634,000 ²	4,306.54	\$64,438,841
Exchanges	Without Completed Transactions						
N-55975	Permabilt/American Land Conservancy						
N-58331	Falcon Pointe						
N-58563	Volkmar						
N-59905	Lake Las Vegas						

'The "exchange name" used by the Bureau generally reflects either one of the significant properties involved in the exchange or the proponent's name.

²The difference in land values does not represent a profit to the Bureau. The additional value received by the Bureau generally was used to cover the difference in value from previous transactions in which the proponent received land that was more valuable than the land acquired by the Bureau.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240

JUL 24 1998

In Reply Refer to:
1245/2200 (350)

Memorandum

To: Office of Inspector General JUL 24 1998
Through: *Thomas R. Kitzner, for*
Assistant Secretary, Land and Minerals Management
From: Director, Bureau of Land Management *Pat Shea*
Subject: Supplemental Response - Draft Audit Report on Nevada Land Exchange
Activities (W-IN-BLM-00 1-97)

This memorandum provides supplemental responses to the Bureau's comments provided on June 29, 1998 to the Office of the Inspector General's Draft Audit Report on Nevada Land Exchange Activities. These supplemental responses were requested as follow-up to meetings with your office held on July 13 and July 15, 1998.

Recommendation 1: Identify the Bureau's entire land exchange program as a material weakness in the Department's Annual Accountability Report.

Supplemental Response: The Bureau has agreed to identify the land exchange program as a material weakness. The responsible Bureau official for this action is the Assistant Director, Minerals, Realty and Resource Protection. Target completion date for submittal of the plan required by the Annual Accountability Report is September 30, 1998.

Recommendation 2: Establish a "land exchange review team" that includes representatives who are non-Bureau personnel. This team should provide advice concerning compliance with established laws, regulations, and procedures for all significant land exchanges before lands are acquired or disposed of through an exchange. Also, team members should possess the technical skills and proficiency, including a thorough knowledge of the appraisal process and the applicable appraisal standards, required to conduct an effective review of proposed exchanges.

Supplemental Response: The Bureau has prepared and submitted to the Department for review a proposal to establish a National Land Exchange Evaluation and Assistance Team. This Team would review land exchange actions and decisions pursuant to the procedures established by this

office on December 29, 1997. for a second level review of exchanges in excess of \$500,000 in value. Upon concurrence of the Department. we will proceed with implementation of the Team. We anticipate that establishment of this Team will satisfy the concerns expressed by the Office of the Inspector General regarding oversight of land exchanges. This proposal. however, does not include non-Bureau representatives as members of the Team. Such a proposal would create potentially troubling issues regarding compliance with the Federal Advisory Committee Act (FACA), Departmental delegations (for example, the Solicitor's delegated role in determining whether agency actions comply with law), appropriate handling of confidential information, and other issues that might arise if the BLM used non-federal personnel for performing functional responsibilities in the land exchange process. We will continue to evaluate options to consider other means of increasing objective input in the review of land exchanges, including the involvement of non-Bureau individuals. It should be recognized, however, that the land exchange process currently provides for full public review and input on land exchange proposals and land exchange decisions, including public review of appraisal reports and information. Other options could include participation by the FACA chartered Resource Advisory Councils in the review of land exchange actions, or other federal agency representation on land exchange program evaluation teams. The responsible Bureau official for this action is the Assistant Director, Minerals, Realty and Resource Protection. Target implementation date for this action is September 30, 1998.

Recommendation 3: Establish a moratorium on land exchanges in the State of Nevada pending establishment of the independent land exchange review team identified in Recommendation 2.

Supplemental Response: The Bureau does not agree to a moratorium on land exchanges in Nevada. However, BLM does not plan on processing additional land exchanges in the Las Vegas area until the existing priority exchanges are substantially completed and the National Land Exchange Evaluation and Assistance Team, as identified above, is approved by the Department and established and available to assist the BLM Nevada State Director. The Bureau will continue to process these existing priority exchanges for the near future. These existing exchanges are subject to the review procedures established by this office on December 29, 1997. The responsible Bureau officials for this action are the Assistant Director, Minerals, Realty and Resource Protection and the Nevada State Director. Target implementation date to establish the Team is September 30, 1998.

Finally, no additional lands will be acquired in the Las Vegas area unless consistent with the Final Las Vegas Resource Management Plan (RMP). The RMP was released on June 15, 1998 and is expected to be effective in October 1998.

Recommendation 4: Ensure that appraisals are supported by credible evidence, as required by the "Uniform Appraisal Standards for Federal Land Acquisitions", when the appraised value is based on an assertion that the property's highest and best use is different from its current zoning or use.

Supplemental Response: The Bureau agrees with this recommendation. An appraisal training course is currently being developed in partnership with the Appraisal Institute and the American

Society of Farm Managers and Rural Appraisers. This course will provide instructional materials on highest and best use, "reasonable probability" of development, and appraisal review procedures. The responsible Bureau official for this action is the Assistant Director, Minerals, Realty and Resource Protection. Target implementation date for this action is June 1, 1999.

Recommendation 5: Revise the Land Exchange Handbook and Instruction Memorandum 97-113 to ensure that all appraisal reports used in a land exchange are reviewed and approved by the State Chief Appraiser and to ensure that the described procedures for dispute resolution are consistent with the requirements of the Federal Land Policy and Management Act of 1976, as amended, and the Code of Federal Regulations (43 CFR 2200).

Supplemental Response: The Bureau will revise the Land Exchange Handbook to **clarify** that all appraisals used in a land exchange will be subject to administrative acceptance by a BLM State Chief Appraiser or an officially designated Bureau Appraiser prior to being submitted to the authorized officer, in accordance with applicable regulations. However, the existing Bureau's delegation of authority (BLM Manual 1203) will still provide for review of appraisal reports by Bureau or other qualified review appraisers. As noted in our June 29, 1998 response, there are practical reasons for relying on reviewers other than the State Chief Appraiser. The Handbook will also be revised to clarify that bargaining will only be conducted after an appraisal has been prepared and the Bureau and exchange proponent have been unable to reach agreement on the appraised value. The responsible Bureau official for this action is the Assistant Director, Minerals, Realty and Resource Protection. Target completion date for this action is September 30, 1998.

It is hoped these supplemental responses are considered in preparation of the Final Report. If you have any additional questions, please contact Ray Brady, Manager, Lands and Realty Group at (202) 452-7773.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240

In Reply Refer to:
1245/2200 (3 50)

JUN 29 1998

Memorandum

To: Office of Inspector General

Through: Assistant Secretary, Land and Minerals Management *Stephen V. Bacon* JUN 29 1998
ACTING FOR

From: Director, Bureau of Land Management *Pat Shea*

Subject: Review of Draft Audit Report-Followup of Nevada Land Exchange Activities
Assignment No. (W-IN-BLM-00 1-97)

I appreciate the opportunity to review and comment on the **Office** of the Inspector General's Draft Audit Report on Nevada Land Exchange Activities, which was delivered to our **office** on June 12, 1998. This is a **followup** report to the Audit Report of July 1996.

The draft Audit Report identifies issues that appear to **fall** within several broad areas of concern. We want to focus attention on the larger management issues involved in the Bureau's land exchange program, and at the same time respond to many of the concerns addressed in the draft Audit Report. We have identified these areas as 1) management oversight, 2) land exchange policies and procedures, and 3) appraisal procedures. I would like to summarize the actions that Bureau of Land Management (BLM) has taken to address issues and concerns in each of these areas, and also summarize our planned future actions.

M a n a g e m e n t

BLM has made several recent improvements in the land exchange program that will directly benefit land exchange activities in Nevada and also improve the overall management oversight of the Bureau's land exchange program. The following actions are highlighted and should be recognized in the Final Audit Report:

- Placed a limited moratorium on land exchanges in the Las Vegas District. The BLM Nevada State Office allowed six ongoing land exchanges to proceed, but a moratorium was placed on new land exchanges. This was done because of limited staff available to take on any additional work and to maintain a sufficient level of management oversight of existing land exchanges.

- Improved management and staff capability at the BLM Nevada State Office and Las Vegas Field Office.
- Revised delegation of authority to ensure an increased level of management oversight of the real estate appraisal program.
- Established procedures for a second level review by the State Director of all land exchanges and Washington Office concurrence in decisions involving exchanges in excess of \$500,000 in value.
- Finalizing plans for establishing a Bureauwide land exchange team to assist in the review of high priority exchanges, provide additional technical support to BLM field offices, and address policy and procedural issues.

Land Exchange Policies and Procedures

BLM has worked very closely with the Office of the Solicitor to ensure that land exchange policies and procedures are consistent with the provisions of the Federal Land Exchange Facilitation Act of 1988 (Public Law 100-409). Regulations implementing the provisions of the Act were finalized in 1993 and have provided the regulatory framework for the direction of the Bureau's land exchange program. The following actions to ensure compliance with these policies and procedures have been taken and should be acknowledged in the **Final** Audit Report:

- Completed the BLM Land Exchange Manual/Handbook in August 1997.
- Initiated a review of potential competitive land exchange procedures with the **Office** of the Solicitor.
- Initiated a review of mineral royalty reservation policies for land exchanges with the Office of the Solicitor.
- Issued policy guidance in 1997 that Notices of Decision would not be published until all reports required by 43 CFR 220 1.7-1, including the appraisal report, are complete and available for public inspection during the public comment period.
- Completed an Alternative Management Control Review (AMCR) of the Nevada land exchange program in 1997. A **followup** Bureauwide land exchange program evaluation is planned during FY 1999.
- Conducted Advanced Lands Transactions course (2100-03) at BLM National Training Center in 1997 and 1998 with an increased emphasis on land exchange policies and procedures.

- Drafted a MOU and initiated discussions with the Fish and Wildlife Service and Forest Service regarding Interagency land exchange processing procedures and policies.

Appraisal Procedures

BLM is aggressively taking action to improve administration of the appraisal function. These actions are focused on improving the documentation of highest and best use determinations in urban areas, ensuring compliance with appraisal standards, and clarifying delegations of authority. The following actions are highlighted and should be recognized in the Final Audit Report:

- Working on an update of the BLM Appraisal Manual to incorporate provisions of the Federal Land Exchange Facilitation Act, changes in delegation of authority, application of State certification and licensing, role and responsibilities of other agency appraisers, and other policy changes. Manual is expected to be completed during FY 1999.
- Identified the land exchange program, specifically the appraisal function, as a material weakness in the 1997 Appraisal Alternative Management Control Review (AMCR). Followup program evaluations and AMCRs are planned during FY 1999.
- Initiated development of an appraisal training course in partnership with the Appraisal Institute and the American Society of Farm Managers and Rural Appraisers to specifically address appraisal issues identified by the OIG. The course is tentatively scheduled to be presented during FY 1999.
- Conducted a Bureauwide Appraisal Workshop in March 1998 and forwarded action items to management for improving BLM's appraisal process. Action items included developing criteria for obtaining two appraisal reports, ensuring that staff appraisers assisting in performing appraisal reviews are adequately trained, and developing policy for subdividing large tracts of Federal land into commercially more valuable tracts.
- Initiated improved appraisal contracting procedures in several BLM State Offices to reduce delays in obtaining appraisal services. BLM is also developing a policy on the use of contributed funds from exchange proponents for contracting of appraisal services.
- BLM Nevada recently hired two new appraisers. Both appraisers have professional MAI (Member of the Appraisal Institute) designation, and are Nevada State Certified Appraisers.
- Contracted for additional independent reviews of approved appraisals for the Del Webb and Dreyfus-Thunderbird Lodge properties. Both appraisal reviews supported BLM's earlier approved valuations.

- Working on update of the BLM Advanced Land Transactions course (2100-03) to incorporate revised appraisal policies and procedures and address appraisal concerns and issues identified by the OIG.

As indicated above, we have taken actions to improve the land exchange program and will continue to provide oversight of issues related to the administration of BLM Nevada's land exchange program. However, we still take issue with some of the interpretations of events, misunderstandings of existing policy and several of the draft Audit Report's recommendations. Attached are specific comments on the draft Audit Report. We request that you thoroughly review our comments and responses prior to completion of the Final Audit Report. These comments also supplement our February 24, 1998, review comments on the Preliminary Draft Advisory Report for the Del Webb Land Exchange and our March 26, 1998, review comments on the Preliminary Draft Audit Report of Nevada Land Exchange Activities.

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The BLM takes particular exception to the implication in Appendix 1 of the draft Audit Report that the appraisal decisions for several exchange transactions resulted in lost revenues of \$18.2 million. The appraisal reports on the **Cashman** and **Dreyfus/Zephyr Cove** land exchanges were prepared by highly qualified appraisers, and reviewed and approved by BLM review appraisers. The appraisers and review appraisers diligently gathered, verified, and analyzed the best information available, in reaching their conclusion of value. We believe the review appraiser performed the due diligence necessary to reach a conclusion of value. The draft Audit Report also suggests that an additional \$3.4 million of funds could have been put to better use since there was no mission-related purpose for the acquisition of three parcels of land in the Sunrise Mountain area as part of the Dreyfus/Zephyr Cove exchange. The environmental assessment and decision record for the **Dreyfus/Zephyr Cove** exchange clearly documented the determination of public interest in the acquisition of these offered lands adjacent to Sunrise Mountain.

The draft Audit Report also includes references to the Advisory Report - "The Del Webb Land Exchange in Nevada" (Report No. 98-I-363, March 1998). The Advisory Report does not take issue with the final approved appraisal for the Del Webb land exchange, but challenges the appropriateness of management decisions throughout the appraisal process. We strongly disagree with the concerns expressed in the Advisory Report and suggestions that there could have been a \$9.1 million loss to the Federal government from this exchange. The BLM decision to seek a second appraisal resulted in BLM receiving greater value for the public lands. This decision supports our position that appropriate management safeguards are in place to ensure that the public interests were protected in the processing of this exchange. Because of the very speculative and volatile nature of the land values in the Las Vegas area, and the size of this exchange, BLM gave this exchange unprecedented attention in both the Nevada State Office and the Washington Headquarters Office. The BLM takes particular issue with the implied criticism that there is something inappropriate about elevating decisions on high priority, high visibility and/or sensitive issues from a field organization to Headquarters. Such actions are not unusual and of themselves cannot imply any impropriety.

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I strongly disagree with the draft Audit Report's recommendation for a moratorium on land exchanges in the State of Nevada until an independent land exchange review team is identified. I share your concern that our exchange program be maintained on a solid footing. I have taken measures to continue our quest for excellence in this program as indicated above. On December 29, 1997, I established procedures for a second level review by the State Director, and Washington Office concurrence in decisions involving exchanges in excess of \$500,000 in value. In addition, I am considering establishing a Bureauwide land exchange team to assist in the review of high priority exchanges, provide additional technical support to BLM field offices, and address policy and procedural issues. If BLM were to implement a moratorium, the objections and negative results from our local and state partners would be overwhelming. I am moving to provide additional oversight of our land exchange program, which will provide the safeguards suggested by the draft Audit Report.

I appreciate the opportunity to comment and request that these comments be considered in preparation of the Final Audit Report. If you have general questions concerning this response, please contact Gwen Midgett, BLM Audit Liaison Officer at (202) 452-7739. If you have any specific questions, please contact Ray Brady, Manager, Lands and Realty Group at (202) 452-7773.

Attachment

BLM Comments
Draft Audit Report
(Followup of Nevada Land Exchange Activities)

Implementation of Recommendations from the July 1996 Audit Report

Recommendation A. 1: Institute competitive procedures (sale or competitive exchange) into the land disposal process to the maximum extent practicable.

We agree with the draft Audit Report that the Bureau has partially implemented Recommendation A. 1 of the July 1996 Audit Report. The Bureau of Land Management (BLM) Washington Office (WO) is working with the Solicitor in developing competitive land exchange procedures and has requested that the Solicitor review the regulatory or policy changes that may be required before a competitive land exchange process could be implemented in the Las Vegas area. The Bureau is prepared to proceed with a pilot effort upon receipt of advice from the Solicitor.

We also continue to support the proposed Southern Nevada Public Land Management Bill (H.R. 449), or other similar legislation that would provide for the return of receipts from the sale of public lands. Such legislation could negate the need for the BLM to conduct competitive land exchanges in the Las Vegas area.

Recommendation A. 2: Direct that all easements on Federal lands proposed for disposal be reviewed to verify grantee needs and that actions be taken to remove any easements that are not needed before Federal lands are exchanged or sold.

The draft Audit Report considers this recommendation from the July 1996 Audit Report implemented. We concur.

Recommendation A. 3: Establish the controls necessary to ensure that land exchanges are processed in full accordance with applicable laws, regulations, and Bureau procedures.

The Bureau does not concur with the draft Audit Report's conclusions that this recommendation from the July 1996 Audit Report has not been implemented. Significant strides have been made towards the establishment of controls to ensure that land exchanges are processed in accordance with applicable laws, regulations, and BLM procedures. The Bureau's Land Exchange Manual/Handbook has been finalized and is being used by all field offices. Supplemental guidance regarding land exchange procedures and policies has also been issued by both the WO and the Nevada State Office.

The specific appraisal reports addressed by the draft Audit Report were prepared by highly qualified appraisers and review appraisers. The appraisers diligently pursued a variety of appraisal issues and reached conclusions that were reasonably supported and met Bureau of Land Management and professional appraisal standards. Most appraisers acknowledge that

there is room for differences in professional judgement regarding the adjustments to comparable sales information in the appraisal process. However, these differences of opinion do not imply that the appraisals or exchanges were inconsistent with applicable laws and regulations. The draft Audit Report noted that the Bureau conducted an Appraisal Alternative Management Control Review (AMCR) between March and May 1997, with a focus on the Nevada appraisal process. However, the draft Audit Report failed to acknowledge that the AMCR identified several areas for improvement and planned corrective actions by BLM, including completion of the BLM Appraisal Manual, improved appraisal contracting procedures, and additional training. These actions are ongoing.

The following comments are also provided to correct misinformation in the draft Audit Report that led to the conclusion that this Recommendation has not been implemented.

1. The Justice Department's "Uniform Appraisal Standards for Federal Land Acquisitions" (UASFLA) is applicable to BLM land exchanges only "to the extent appropriate" (43 CFR 2201.3). The UASFLA sets documentation standards for appraisal reports prepared in anticipation of a condemnation trial in a Federal court. Land exchanges are voluntary transactions, not condemnation actions. Consequently, the mechanism for setting value and resolving value disputes is different. The Federal Land Exchange Facilitation Act of 1988 recognized this difference and BLM promulgated regulations in 1993 that established appraisal provisions that are specifically applicable to federal and non-federal lands involved in voluntary land exchange transactions. It should also be noted that the "standards" referenced in Footnote 4, page 8 of the draft Audit Report are only guidelines when applied to voluntary land exchange transactions.
2. **The** draft Audit Report fails to recognize that the BLM Real Estate Appraisal Manual (June 1987) has been modified by the provisions of the Federal Land Exchange Facilitation Act of 1988, the regulations promulgated in 1993, and the 1997 revised delegation of authority policy for appraisal reviews. These regulatory and policy changes supercede some provisions of the existing Manual. BLM has been working on an update of the Real Estate Appraisal Manual, which is expected to be completed during FY 1999, to incorporate these changes.
3. **The** draft Audit Report finds that "there was no credible evidence to support the assertion that a use permit allowing development of a 650-lot subdivision on the **Cashman** property could be obtained" and therefore the property was overvalued by \$2.5 million. The appraisers and reviewers made a diligent effort to thoroughly and professionally evaluate all of the valuation issues related to the **Cashman** property. The appraisal and the review statement for the appraisal, documents the appraisers' and the review team's deliberations regarding these issues. After an examination of the comparable sales and discussions with the Clark County Planning and Zoning staff and the engineering contractor, the appraisers and review appraisers concluded there was a reasonable likelihood that water could be obtained and developed and that potential buyers would conclude the same. The

appraisers knew water was a problem, but after looking into the issue and considering information presented by zoning officials and engineering consultants. they decided that the availability of water was not an insurmountable problem.

4. The draft Audit Report finds that “the asserted development potential of the Dreyfus/Zephyr Cove property was not substantiated by credible evidence” and therefore the property was overvalued by \$9.8 million. The best available information from real estate professionals, attorneys, consultants, and the local zoning authority (Tahoe Regional Planning Agency) was used in the determination by the appraiser and review appraiser that there was reasonable probability the property could be divided. The BLM accepted the assertion of development potential in accordance with the “Uniform Appraisal Standards for Federal Land Acquisitions” which states, “...if the property is clearly adaptable to a use other than the existing use, its marketable potential for such use should be considered in determining the property’s fair market value.” In many other areas, reasonableness of the determination of highest and best use may be “tested” by indications of similarly approved development in the vicinity of a subject property. However, in the Lake Tahoe area this form of “testing” is inconclusive due to the lack of similar properties. The draft Audit Report also fails to recognize at least two other conditions which influenced the disparity in value. First, the entire property was not acquired at one time and the appraisal reports and review approvals reflect the separate values of Phase I and Phase II as “stand-alone” parcels. Second, Phase II of the exchange occurred almost a year after the exchange proponent acquired the entire property and during this time period sales data shows marked increases in the value of lakefront property.
5. The decision to allow Del Webb to furnish the initial appraisal for the federal lands involved in the Del Webb land exchange was in full compliance with the provisions of the land exchange regulations (43 CFR 2201.3-1). The regulation states that “a qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties”. On February 2, 1996, the BLM Nevada State Director signed an agreement that allowed Del Webb to provide an appraisal report of the selected Federal lands, as provided for by 43 CFR 220 1.3- 1. The appraiser was better qualified for this type of transaction and appraisal assignment than any pre-qualified appraiser on BLM Nevada’s contract list. To the extent that a decision to allow Del Webb to furnish the initial appraisal conflicted with a field policy or practice, the decision was fully within the discretion of BLM Headquarters’ Officials.
6. The development approach used by the appraiser for the Del Webb appraisal report was prepared according to standards contained in the “Uniform Appraisal Standards for Federal Land Acquisitions” (UASFLA). To maintain the independence and integrity of the appraiser, the decision to use the development approach is made by the appraiser, not the reviewer. The appraiser also included a market approach. He concluded the cost development approach was a better indication of value. This is in compliance with

UASFLA that states: “However, if there are no comparable sales, then other methods must be resorted to in order to ascertain market value; hence, the courts have allowed the use of the developer’s residual approach when comparable sales have been lacking.”

7. The BLM selected the contract review appraiser to review the initial appraisal report for the Del Webb land exchange because they were the best qualified, not because Del Webb nominated them. The **firm** selected was evaluated along with five other potential contractors. The contract for the review appraisal was awarded following appropriate procurement procedures through the BLM National Business Center (Denver).
8. We strongly disagree with the concerns expressed in the Advisory Report on the Del Webb land exchange and suggestions carried forward in the draft Audit Report that there could have been a \$9.1 million loss to the Federal government from this exchange. The BLM decision to seek a second appraisal resulted in BLM receiving greater value for the public lands. This decision supports our position that appropriate management safeguards are in place to ensure that the public interests were protected in the processing of this exchange. The BLM takes particular issue with the implied criticism that there is something inappropriate about elevating decisions on high priority, high visibility and/or sensitive issues from a field organization to Headquarters.
9. The draft Audit Report finds that “there was no discernable mission-related purpose documented to reasonably support the acquisition” of three parcels of land in the Sunrise Mountain area as part of the **Dreyfus/Zephyr** Cove exchange. The Bureau concurs with the requirement that acquisition of private land must be “consistent” with existing land use plans; however, we disagree that those lands must be specifically identified in the plan. While the 1984 Management Framework Plan (MFP) is silent about land acquisitions in general, the MFP does identify that the Sunrise Mountain lands are to be managed for multiple use with an emphasis on recreation, recognizing existing and future intensive recreation use. The preferred alternative in the Draft Resource Management Plan (RMP) identifies approximately 37,600 acres in the Sunrise Mountains as an Area of Critical Environmental Concern. That same area has also been identified as a Special Recreation Management Area. The environmental assessment and decision record for the subject land exchange clearly documented the determination of public interest in the acquisition of the offered lands adjacent to Sunrise Mountain, as required by 43 CFR 2200.0-2 and 43 CFR 2200.0-6(b). While it is true that the outdated MFP was silent related to acquisitions, that plan and the Draft RMP provide clear documentation that Sunrise Mountain contains resources and resource management needs that will benefit the public.
10. The draft Audit Report concludes that Notices of Decision were issued on several land exchanges before appraisals and other required analyses were completed. This issue involves exchange transactions that predated discussions of the requirements of 43 CFR 2201.7- 1 with the Department Solicitor in late 1996. The BLM issued a clarification of

Bureau policy by Instruction Memorandum 97-74, dated February 11, 1997. The BLM Nevada State Director subsequently provided supplemental guidance that Notices of Decision would not be published until all the required reports, including the appraisal, are complete and available for public inspection during the comment period.

11. The draft Audit Report finds that “the Bureau did not provide an adequate and effective review of the Forest Service’s negotiation documentation and appraisal review” for the Deer Creek exchange and therefore the property was overvalued by \$5.9 million. The draft Audit Report recognizes that the value for this transaction was reached through a bargaining effort by a Forest Service bargaining team. It should be noted that the BLM Nevada State Director had officially delegated these appraisal responsibilities to the Forest Service in March 1995. The authority to utilize bargaining or another process to resolve disputes over value is provided for by Section 3 (a) of the Federal Land Exchange Facilitation Act of 1988. The bargaining effort is based on an analysis of appraisal reports, assumptions made by the appraisers, the adequacy of market information, and the reasonableness of the conclusions of value. The Forest Service bargaining agreement clearly considered these factors. Any offer, settlement, or agreed upon value must be approved by a management official, which in this case was the BLM Nevada State Director, not the State Chief Appraiser. The BLM Nevada State Director accepted the negotiated value. The bargaining effort was successful in that the negotiated value was some \$2 million less than the value asserted by the exchange proponent.
12. The delegation of authority for appraisal review was changed by Instruction Memorandum No. 97- 113 to improve management oversight of the appraisal process. The new delegation allows the State Director to re-delegate authority for approving market value to the State Office Chief Appraiser or other qualified appraisers. There are practical reasons for relying on reviewers other than the State Chief Appraiser. The State Chief Appraiser may have workload conflicts or may not have the expertise necessary to review an appraisal involving a unique or specialized property. The manager may also disqualify the appraiser if there is a potential conflict of interest or they do not perceive the reviewer as impartial and objective in conducting the review. However, BLM managers are ultimately responsible for the integrity of the agency’s decision-making process, including the adequacy of the appraisal support.

Recommendation B. 1: The accounting reports of income and expenditures required by Section 2(e) of the Santini-Burton Act are prepared and submitted to Bureau headquarters for submission to the appropriate Congressional oversight committees.

The draft Audit Report considers this recommendation implemented. We concur.

Recommendation B. 2: The Nevada State Office uses the land sales process, except in compelling circumstances, when disposing of its Santini-Burton Act lands until the sales revenues generated closely approximate the Lake Tahoe Basin acquisition costs. Any

exchange proposals from that time should be closely monitored to ensure that the exchange is justified and that the costs incurred as a result of the Santini-Burton Act remain relatively nominal.

The draft Audit Report considers this recommendation implemented. We concur.

Recommendations Included in the Draft Audit Report

Recommendation 1: Identify the Bureau's entire land exchange program as a material weakness in the Department's Annual Accountability Report.

Response: We agree. Although the events surrounding the BLM land exchange program in Nevada are unique, there is a likelihood that similar management and staffing issues may occur in other BLM State Offices. We will conduct follow-up reviews in other BLM State and field offices during FY 1999.

Recommendation 2: Establish a "land exchange review team" that includes representatives who are non-Bureau personnel. This team should provide advice concerning compliance with established laws, regulations, and procedures for all significant land exchanges before lands are acquired or disposed of through an exchange. Also, team members should possess the technical skills and proficiency, including a thorough knowledge of the appraisal process and the applicable appraisal standards, required to conduct an effective review of proposed exchanges.

Response: We agree there should be increased management oversight of the land exchange program. The BLM is taking steps to improve management of the land exchange workload and assure the availability of adequately trained and experienced lands and real estate appraisal staffs. This effort is occurring at the State Office and field levels.

We will evaluate the "land exchange review team" proposal along with other options. However, we are unwilling to make a specific commitment at this time on the possible roles, responsibilities or organization of a review team. We believe there are a variety of options available to improve compliance with agency standards and ensure effective internal control.

Recommendation 3: Establish a moratorium on land exchanges in the State of Nevada pending establishment of the independent land exchange review team identified in Recommendation 2.

Response: We disagree. There is currently a limited moratorium on new land exchanges in the

Las Vegas area. Imposing a full moratorium on land exchanges currently in process would likely create a financial hardship for the exchange proponents and generate further distrust.

We will continue the existing limited moratorium until we are assured that the BLM Nevada State Office and the Las Vegas Field Office have the management oversight, adequate staff, and procedures necessary to assure compliance with Bureau policies. In addition the Washington Office has established procedures for the oversight and review of all decision actions for land exchanges in excess of \$500,000 in value.

Recommendation 4: Ensure that appraisals are supported by credible evidence, as required by the “Uniform Appraisal Standards for Federal Land Acquisitions,” when the appraised value is based on an assertion that the property’s highest and best use is different from its current zoning or use.

Response: We agree. BLM State Chief Appraisers are responsible for assuring that appraisal reports meet agency standards. The regulations (43 CFR 2200.0-5) define highest and best use as the most probable legal use of the property, based on market evidence as of the date of valuation, expressed in an appraiser’s supported opinion. The appraisal report is also required to include information regarding the zoning, current use, and an analysis of highest and best use (43 CFR 2201.3-3 (d)).

BLM will coordinate development of an appraisal course to be presented to BLM appraisers, contract appraisers, and other agency appraisers involved in land exchange appraisals. The course will be developed and presented by the Appraisal Institute and the American Society of Farm Managers and Rural Appraisers. The course will focus on highest and best use, how to document “reasonable probability,” and improving the effectiveness of the appraisal review function. The course is tentatively scheduled to be presented during FY 1999.

Appraisal reports on lands with a high value will be checked at the BLM State Office level to ensure that there is sufficient documentation supporting a highest and best use different **from** its current use. Follow-up reviews will be conducted by the Washington Office during FY 1999.

Recommendation 5: Revise the Land Exchange Handbook and Instruction Memorandum 97-113 to ensure that all appraisal reports used in a land exchange are reviewed and approved by the State Chief Appraiser and to ensure that the described procedures for dispute resolution are consistent with the requirements of the Federal Land Policy and Management Act of 1976, as amended, and the Code of Federal Regulations (43 CFR 2200).

Response: This recommendation includes two elements: one involves appraisal review and the other “bargaining.”

Appraisal Review

We disagree with the recommendation requiring the State Chief Appraiser to review and approve all appraisal reports. The current delegation of authority allows the State Director to re-delegate authority for approving market value to the State Office Chief Appraiser or other qualified review appraisers. This is a practical way to handle appraisal review workload and is also consistent with 43 CFR 220 1.3- 1 (a), which states:

A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual, approved by the authorized officer, who is competent, reputable, impartial, and has training and experience in appraising property similar to the property involved in the appraisal assignment.

The reviewer must also be qualified, as required by 43 CFR 2201.3-4, which states:

Appraisal reports shall be reviewed by a qualified review appraiser meeting the qualification set forth in Section 220 1.3- 1 of this part.

State Directors are responsible for administration of the appraisal function consistent with applicable laws and policies. They usually assign responsibility for the day-to-day operation to the State Chief Appraiser. Duties include contracting for appraisal services, monitoring performance, recommending payment of invoices, conducting appraisal reviews, supervising a staff, and serving as an advisor to the State Director and field managers. There are practical reasons for relying on reviewers other than the State Chief Appraiser. The State Chief Appraiser may have workload conflicts or may not have the expertise necessary to review an appraisal involving a unique or specialized property, e.g., timber or minerals. The manager may also disqualify the appraiser if there is a potential conflict of interest or they do not perceive the reviewer as impartial and objective in conducting the review. The BLM New Mexico State Office does not have a State Chief Appraiser and as a result the BLM Arizona State Office provides services.

BLM does not expect the State Directors or field office managers to be trained and qualified appraisers. Their responsibility, however, is to obtain the necessary resources that will enable them to make sound, justified, and reasonable decisions. Regardless, the BLM Land Exchange Manual makes it clear that the decision to accept the review report and approve the appraised value is a BLM decision that cannot be delegated outside the agency. BLM must explain and support a decision to accept an appraisal report or a review report prepared by another agency.

Bargaining

BLM also disagrees with the recommendation regarding “bargaining”.

The Federal Land Exchange Facilitation Act (P.L. 100-409) has language allowing the agency to use bargaining or another process to decide value. Land exchanges are voluntary transactions requiring agreement among the parties. It would not always be possible to get the parties to accept conclusions of the appraiser. Therefore, it is unrealistic to believe the agency can always impose their opinion of value on the property owner. 43 CFR 2201.4(a)(1) states:

Instead of submitting the appraisal to an arbitrator, as provided in paragraph (2) of this section, the Secretary concerned and the other party or parties involved in an exchange may mutually agree to employ a process of bargaining or some other process to determine the values of the properties involved in the exchange.

The regulation in 43 CFR 2200.0-5(h) includes the following definition:

Bargaining means a process, other than arbitration, by which parties attempt to resolve a dispute concerning the appraised value of the land involved in an exchange.

It was intended that bargaining be a process for reaching agreement on the assumptions and conclusions in the appraisal report. BLM will always obtain an appraisal for the lands involved in an exchange, then use bargaining only if necessary to resolve a dispute over value. However, negotiations or other methods may even be used when bargaining is unsuccessful. 43 CFR 2201.4(a)(1) states:

If the parties cannot agree on the appraised values, they may agree to initiate a process of bargaining or some other process (*emphasis added*) to resolve the dispute over values.

This is consistent with Government-wide regulations in 49 CFR 24.102(I) implementing the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.). The regulation states:

Administrative settlement: The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at the amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest.

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/ Recommendation Reference	Status	Action Required
1, 4, and 5	Resolved; not implemented.	No further response to the Office of Inspector General is required. The recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.
2	Management concurs; additional information needed.	Provide a plan for ensuring non-Bureau representation on the proposed National Land Exchange Evaluation and Assistance Team. In addition, the following information should be provided: the Team's charter showing the specific authorities and responsibilities given to the Team, including information on the criteria by which the Bureau will determine which exchanges will be referred to the Team for review, and the membership of the Team, including information on the qualifications of non-Bureau members.
3	Unresolved.	Reconsider the recommendation, and establish a temporary moratorium on new and/or expanded Nevada land exchange activity until a National Land Exchange Evaluation and Assistance Team that includes non-Bureau representation is established and available to assist the Bureau's Nevada State Director.

**ILLEGAL OR WASTEFUL ACTIVITIES
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