

*Supplemental Appraisal Standards  
for  
Board of Trustees Land*

**Division of State Lands, Bureau of Appraisal  
Florida Department of Environmental Protection  
June 15, 2010**

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www.dep.state.fl.us/lands/appraisal.htm



# Department of Environmental Protection

## Supplemental Appraisal Standards for

### Board of Trustees Land

June 15, 2010

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## **SUPPLEMENTAL APPRAISAL STANDARDS FOR BOARD OF TRUSTEES LAND**

**PURPOSE** The purpose of these standards is to supplement the use of the Uniform Standards of Professional Appraisal Practice (USPAP), as required in Chapters 253 and 259, F.S., and to set forth general principles applicable to the valuation and management of property by the Board of Trustees of the Internal Improvement Trust Fund (Board).

**SCOPE** These standards cover the following areas:

A. General format for self-contained appraisal reports and discussion of considerations within the format. Other report formats, including summary and restricted use formats, may be required by specific assignments. If other formats are required, the appraiser will be given specific directions.

B. General standards of a miscellaneous nature.

Although these standards are developed to encourage uniform approaches to appraisal problems and to provide a guide for adequate supporting data and other factual information used to develop opinions of market value, they are not intended to limit the scope of appraisal investigations or bias the independent judgment or value opinions of appraisers employed by the Board.

**POLICY** It is the policy of the Board that the public trust of the citizens of Florida be upheld and protected. Since public lands or public funds are involved, arriving at prudent conclusions is incumbent upon all who are employed to represent the public interest and the citizens generally. In so doing, care must be taken that the assignment results are fair.

## **INTRODUCTION**

Unless otherwise indicated by the context, the term Department as used in these standards refers to Florida's Department of Environmental Protection (DEP). Likewise, Division refers to the Division of State Lands (DSL) within the Department and Bureau means the Bureau of Appraisal (BA) within the Division.

These supplemental appraisal standards have been created to serve only as a guideline in the appraisal process, appraisal consulting assignments, and appraisal review procedures attendant to the land acquisition and management process embodied in Section 253.025, F.S., for non-conservation properties and Section 259.041, F.S., for conservation and recreation lands. The Uniform Standards of Professional Appraisal Practice, January 1, 2010 (USPAP), shall serve as the most appropriate guideline when preparing appraisal services for state land acquisitions or management purposes. Supplemental appraisal standards shall also be implemented to accommodate other useful or statutorily required information.

It is recognized that appraising is a professional practice that involves judgment. To this extent, nothing in USPAP or these supplemental appraisal standards is intended to substitute for reasonable judgment with respect to the appraisal and the appraisal review process. If a standard, rule or statute allows for waiver of it, appraisers and review appraisers will substitute reasonably prudent procedures with adequate written reasoning and support.

Appraisals performed for state land acquisitions and management under Chapters 253 and 259, F.S., should substantially comply with USPAP and these supplemental appraisal standards. Strict compliance is not mandatory for all standards contained herein; however, an appraiser's quality point rating with the Bureau of Appraisal may be lowered if a standard is overlooked or ignored. Substantive standards (such as failure to include a highest and best use analysis or the omission of an appropriate approach to value) are those that if omitted, ignored or violated, are likely to result in a change in value. Compliance with substantive standards is required. Non-substantive standards (such as failure to include a picture of a comparable sale or failure to provide a sketch) are those that if omitted, ignored or violated, are not likely to result in a change in value. Compliance with non-substantive standards is not required; however, it is highly recommended.

Unless noted otherwise, the standards comments, discussions and requirements that follow will be applicable to both acquisition and management functions of appraisal services for the Board of Trustees Lands. Under certain circumstances the "Uniform Appraisal Standards for Federal

Land Acquisitions”, December 2000, (Yellow Book) are to be used. ([www.usdoj.gov/enrd/land-ack](http://www.usdoj.gov/enrd/land-ack)) The appraiser will be given a specific direction as to when to use federal standards.

### **STATE LAW**

Chapters 253 and 259, F.S., set forth the statutory authority and describe the duties and responsibilities pertaining to the acquisition and management of state lands, title to which vests with the Board. Sections 253.025 and 259.041, F.S., and Chapter 18-1, F.A.C., pertain specifically to the appraisal, consulting assignments and appraisal review for acquisitions of real property and form the basis from which these standards are derived. Land acquisition procedures provided for in these sections are for voluntary, negotiated acquisitions. When appraisal services are required for management or disposition of lands, procedures are set forth in Chapter 253, F.S. and Chapters 18-2 (for state-owned uplands) and 18-21, (for sovereignty submerged lands) F. A. C.

### **APPLICABILITY OF LAWS**

The judgment or opinion of the appraiser should be governed by the legal framework outlined above. Questions of applicability or interpretation of law which may arise during the course of the appraisal assignment shall be addressed through the Bureau of Appraisal to the Department’s Office of General Counsel.

# **PART A. Supplemental Appraisal Standards For Board Of Trustees Land**

## **A-1.00 SCOPE OF SERVICES**

For all appraisal service assignments, a detailed "Scope of Services" is required. The appraisers and review appraisers must follow both their stated Scope of Services, as contained in their reports (dictated by the characteristics of a specific project) as well as their contractual Scope of Services with the agency.

### **A-1.01 COMPETENCY**

As part of maintaining the Division's approved appraiser list, the appraisers will identify their areas of expertise in appraising specialty properties. Appraisers will be solicited based on their areas of expertise. Included in the Addenda, Exhibit F is a copy of the "Form for Identifying Appraisal Specialty Areas for Which Competency Rule of the USPAP Is Met" to be used by the appraiser, which shall be completed and sent to the Bureau when applying to be included on the approved appraiser list and for each annual renewal for appraisers on the list.

### **A-2.00 MARKET VALUE**

Unless otherwise stated in the appraisal assignment and contract, the estimate of value sought shall be that of market value. Market value is defined as:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under the following conditions:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;

4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

If other definitions of market value are needed for a specific assignment, the Bureau will provide the alternative definition to the appraiser or the appraiser will be required to compose an alternative definition according to the processes outlined in USPAP, subject to the Bureau's approval. For management functions, types of value other than market value may be required such as value in use, plottage value or easement value.

#### **A-2.01 HISTORICAL, ARCHEOLOGICAL AND SPECIAL VALUES; SEVERANCE DAMAGES**

No consideration shall be given to any special value of the property to the owner not directly reflected in the market value. Desirability to the owner because of sentiment, family history or specialized personal use shall not be considered in market value. Historical and/or archeological association may be considered only when and to the extent that it is recognized in the market.

Severance damages are to be considered only when there is federal government participation in an acquisition; otherwise severance damages do not apply in voluntary, negotiated acquisitions and shall not be estimated. The appraiser may comment on any potential damage perceived to the remainder property, but shall not incorporate such damage in the value opinion unless specifically requested.

#### **A-2.02 EXCHANGE APPRAISALS**

Recommended methodology considerations and variations for valuations of proposed exchanges of property are presented in the Instructional Memo in the Addenda as Exhibit G.

#### **A-2.03 ASSUMPTIONS AND LIMITING CONDITIONS, EXTRAORDINARY ASSUMPTIONS, HYPOTHETICAL CONDITIONS**

General assumptions pertaining to the appraisal must be listed. Any hypothetical conditions or extraordinary assumptions must be pre-approved by the Chief of the Bureau of Appraisal.

### Surplus Land Reports:

Opinions of market value requested by the Board for the sale of surplus property or easements across state land may require the inclusion of extraordinary assumptions or hypothetical conditions, which shall be provided by the Bureau to the appraiser. The extraordinary assumptions and hypothetical conditions must be properly described within the report, as well as being clearly and conspicuously presented along with all statements of value or consulting assignment conclusions.

Valuations of surplus property may require an appraiser to address the value of an adjacent upland parcel as an assemblage with a Board surplus parcel. This is to identify plottage value, defined as the increment of value created when two or more sites are combined to produce greater utility. This might be necessary when a tract benefits from the acquisition of the surplus parcel. A typical "parent tract" (a.k.a. larger parcel) can be considered when upland easements cross state-owned land parcels that are larger than what is typical for the neighborhood or have atypical or non-economic land use or zoning designations. The Bureau of Appraisal shall provide specific instructions to the appraiser regarding the valuation of proposed assemblages prior to commencement of this type of surplus property assignment.

### For Other Management Function Reports:

Valuations of state property, when an owner or applicant has requested that the Board grant property rights such as easement or leasehold interests, (across upland or sovereignty submerged land) can require the appraiser to also value the adjacent upland tract or applicant's parent tract. The method of valuation for these appraisals is typically to estimate the "before" and "after" value of the subject partial interest together with the parent tract. Any incremental increase in value between the "before" and "after" value due to the acquisition of such rights shall be allocated as a value for those specific rights and another value for enhancement in value of the upland parcel or applicant's parent tract. Therefore an appraiser shall present two conclusions of value in this type of appraisal report or consulting assignment. (See Addenda, Exhibit E for the Instructional Memorandum regarding suggested methodology for boating channel easements across sovereignty submerged land.)

### **A-3.00 FLOOD HAZARD**

The appraiser shall investigate and report as to whether or not the subject property is located in a flood hazard area. If it is in a flood hazard area, the appraiser shall so state and discuss how and why this impacts value.

### **A-4.00 SUBJECT SALES HISTORY**

A narrative discussion of the sales history of the subject parcel(s) within the previous five (5) years as required by Sections 253.025 and 259.041, F.S., shall be included in each appraisal report conducted for the valuation of property to be acquired. This history shall show date of sale, official record book and page, names of all recorded grantors and grantees, the indicated consideration regardless of amount, the verified consideration and the source of verification. If the subject property was part of a larger parcel, the history shall so state.

If a sale of the subject within the previous five years is not employed in the valuation process, the appraiser shall explain the reason(s) for its omission. If no transfers of the subject property have occurred within the previous five years, the appraiser shall so state.

The appraiser shall include a statement as to whether or not there have been any changes in or to the subject property since the last sale of record, if said sale has occurred within the past five years. The effect of these changes on the value established in the most recent sale shall be briefly discussed. Changes affecting the property include such things as apparent accretion, reliction or erosion, land use adaptability, drainage, change of zoning or governmental regulation, permitting activities, change in the status of utilities, annexation and other significant changes.

For the valuation of property other than acquisition purposes, the ownership history timeline is to conform to the USPAP.

#### **A-4.01 LISTING OF SUBJECT**

The appraiser shall state the listing price of the subject, if applicable, and discuss all offers made during the listing period, if available. The appraiser shall comment on differences of 20% or more between the listing price and appraised value.

#### **A-4.02 ASSESSED VALUE**

The current assessed value of the subject shall be included in the appraisal report, unless waived by the requesting agency, in keeping with any specific circumstances in Rules 18-1, 18-2 and 18-21, F.A.C.

#### **A-5.00 ERRORS IN DATA FURNISHED**

It is incumbent upon the appraiser to notify the Bureau of Appraisal immediately upon finding an apparent error in data furnished by the State. The appraisal should accurately reflect the property conditions as of the date of value, with the exception of the defined boundary or other special conditions made a part of the contract. Differences in ownership of all or part of the subject and differences in any of the factors affecting value found by the appraiser as compared to the data furnished should be reported with a specific identification of the source. If such differences materially change the scope of the appraisal assignment, the terms of the task assignment or contract will be modified, if necessary.

#### **A-6.00 PROPERTY DATA**

The appraiser should describe the property by its present use and physical appearance, noting such pertinent factors as its location, size, shape, topography, access, highway frontage, water frontage, utilities (if any), present land use and zoning of the property, and any other pertinent features of either a positive or negative nature. The location description should be such that a reader can physically locate the property by use of the description. Existing means of ingress and egress, mineral deposits, timber reservations, oil, gas and mineral reservations or other reservations, deed restrictions, easements, encroachments and encumbrances need to be described. Drainage and any other important features should also be described as well as a statement as to their effect on value, if any. The Bureau of Appraisal should be contacted as soon as any unusual conditions are discovered during the due diligence research by the appraiser. Photographs of the subject should incorporate the prominent features of the property and be accurately labeled.

#### **A-7.00 HIGHEST AND BEST USE**

Highest and best use is defined as:

the reasonably probable and legal use of vacant land or an improved property that is physically possible, legally permissible, financially feasible, and that results in the maximally productive highest value.

Highest and best use shall be considered to apply to the "immediate future," which shall mean a period of time not to exceed five years.

The highest and best use estimate is a logical extension of the neighborhood or area analysis. As such, the appraiser shall comment on existing land use patterns surrounding the subject property and its relationship to those patterns.

The appraiser shall provide support for and explain the reasoning process in the development of the highest and best use. The appraiser must address each of the four criteria in the highest and best use analysis, and be specific as to the conclusion.

#### **A-7.01 NON-ECONOMIC HIGHEST AND BEST USE**

A non-economic highest and best use is not a proper basis for the opinion of market value (See Addenda, Exhibit I); therefore, a highest and best use conclusion of conservation, preservation, or any other use that requires the property to be withheld from economic production in perpetuity, will not be acceptable as a basis for value.

#### **A-7.02 OTHER HIGHEST AND BEST USE ESTIMATES**

Highest and best uses such as "speculative investment," "future development" or "assemblage with the adjoining ownership" are not acceptable unless the appraiser states the ultimate use of the property.

- The appraiser must state which speculative investment, or
- specifically what type of future development, and
- indicate the contemplated time frame.

Additionally, a residential highest and best use should be appropriately categorized as to single family or multi family, or high, medium or low density. A highest and best use of assemblage should be used with caution because this use could be considered a "value in use," unless properly and thoroughly explained.

Further, any information relating to a holding period for a speculative investment property or comments regarding development pressure found during interviews and sales research and verifications of sales must be summarized in this portion of the report in order to clarify these types of highest and best use conclusions.

Sales or market data used in the analysis are to have similar characteristics as the concluded highest and best use of the property; otherwise, adjustments or analysis is required to reflect the differences.

### **A-8.00 SALES COMPARISON APPROACH**

Three comparables each for vacant land, improved property or rental categories will be considered the minimum for each reconciled opinion of value. Contracts to purchase are an indication of current market activity. They can be mentioned in the appraisal; however, they shall not be relied upon in the reconciliation of value. If current contracts for purchase or offerings of comparable properties are referenced in the appraisal report, these shall not substitute for the required minimum number of sales. Any listings for sale in the market area of the subject are to be identified and discussed. If none are found, the report shall state that finding.

### **A-8.01 GOVERNMENT COMPARABLE SALES**

The appraiser is encouraged not to use prior purchases by non-profit organizations, water management districts, or quasi-governmental or governmental agencies, as primary indicators of value. Preferably, only sales from the private sector should be used as indicators of value for direct comparison to the subject property. Regional sales searches are encouraged in the event no local comparable sales can be located.

Properties purchased by governmental agencies or non-profit groups should be used with caution, and only after a diligent search of the private sector has been conducted and shows no private sector comparable sales.

Any use of governmental or quasi-governmental sales shall be analyzed and considered separately in the appraisal report. Verification and analysis of these sales must consider their economic highest and best use when they are purchased and not the government's use for which they were purchased.

### **A-8.02 COMPARABLE SALES FORMAT AND MINIMUM NUMBER OF SALES**

It is recommended that all comparables be reported in the format shown in the Addenda, Exhibit C. This format is applicable to all types of property and shall be used in all self-contained and summary reports. Headings not pertinent to the type of data reported such as improvement or rental data for unimproved land sales may be omitted. A minimum of three (3) closed private sector sales are required to arrive at an opinion of value for land and for improved properties. Listings or contracts to purchase are an indication

of current market activity. They may be mentioned in the appraisal; however, they shall not be relied upon in the reconciliation of value.

### **A-8.03 VERIFICATION OF COMPARABLE SALES**

The appraiser shall state the conditions of sale and whether the sale was an arm's-length transaction representative of what the buyer or seller perceived to be market value, including the effect on the purchase price as a result of outstanding interests (such as oil, gas or mineral reservations). If the property was bought as an investment with no immediate development planned, the appraiser shall state the purchaser's intended use of the property, including the purchaser's anticipated holding period, if available..

If verification is with the seller, the appraiser should verify the prior sale, and include that information in the sale write-up, if it occurred within the past 3 years. Whether or not the sale appears to be meaningful relative to a possible time adjustment should also be discussed.

All sales, rentals, offerings or contracts shall be verified by the appraiser or their staff with either a party to the transaction or the agent handling the transaction. The person in the appraiser's office who made the verification shall be identified. The person with whom verification was made (buyer, seller or agent) shall also be identified along with their telephone number and the date of verification.

### **A-8.04 SKETCH OF COMPARABLE SALES**

A sketch of each sale property upon which significant reliance is placed will be included in the report. This may be a freehand sketch, not to scale, but should depict the general shape of the sale property and should indicate access or any other information to assist the reader.

### **A-8.05 PHOTOGRAPHS OF COMPARABLE SALES**

Photographs or an aerial map/photograph of unimproved comparables are required. At least one aerial photograph is advised with property boundaries overlaid. County Property Appraiser's web pages are acceptable with the date of the photograph included in the caption. The preferred location is either above or below a sketch of the property. Photographs of significant improvements on comparable properties are required. Two photographs should be taken of each major improvement.

### **A-8.06 COMPARABLE SALE DEED**

Provide a copy of the vesting deed of each sale, following the sketch and photographs. If lengthy, they may be placed in the addenda or only the pertinent sections included.

### **A-8.07 COMPARABLE SALES SUMMARY AND ADJUSTMENT GRIDS**

A sale summary spreadsheet and a separate adjustment grid are required. The summary spreadsheet must provide sale descriptions and the adjustment grid must include the differing elements of comparison identifications with adjustments in the appropriate sequence.

### **A-9.00 INCOME APPROACH**

The Discounted Cash Flow (DCF) methodology is based on the principle of anticipation; in effect, value is created by the anticipation of future benefits. The DCF analysis reflects investment criteria and requires the appraiser to make empirical and subjective assumptions. It is the responsibility of the appraiser to ensure that the controlling input is consistent with market evidence and prevailing market attitudes.

Further, all of the assumptions used by the appraiser in DCF analysis (such as growth rates, decline rates, rental rates, discount rates, financing terms, expense trends, capitalization rates or capital improvement costs) directly affect the conclusion of market value using this appraisal technique.

For the reasons stated above, the appraiser shall not utilize a DCF analysis as the sole indicator of value unless all variables and assumptions in the analysis are well-supported and carefully documented. A DCF analysis can be used as an additional tool available to the appraiser and is best used as support for other approaches or methodologies for estimating value.

### **A-10.00 INTERPRETATION AND RECONCILIATION**

The appraiser shall summarize and interpret all indications of value and shall state the reasons why one or more of the conclusions are indicative of market value. Where reliance is placed on a particular approach to value or certain data within an approach to value, such reliance should be explained and reasoning provided.

The appraiser shall reconcile the data and analysis into a final opinion of market or other defined value or assignment conclusions and shall indicate

the allocation of values between land and improvements, if any. When partial interests are valued, the property rights appraised shall be defined and allocated values provided.

Extraordinary assumptions and hypothetical conditions, if any, shall be restated with all final opinion of value statements in the report.

### **A-11.00 CONSERVATION EASEMENTS FOR ACQUISITION AND APPRAISAL METHODOLOGY**

Valuation methodologies for conservation easements (CE) include:

1. Before and After Analyses (The value of the CE is the difference.)
  - a. The "Before" value is the "as is" market value, consistent with the "as is" highest and best use conclusion, without the proposed CE in place.
  - b. The "After" value is the market value, consistent with the highest and best use conclusion "as if encumbered by the CE". The "After" value may be supported by either or both of the following:
    - i. Direct comparison with other properties sold subject to similar easements. (a.k.a. "remainder" sales)
    - ii. Direct comparison with sales of properties with similar practical uses to the subject as encumbered.
2. Direct Comparison with other conservation easements or the direct purchase of similar development rights.

A table is to be included summarizing the "Before" and "After" rights impacted by the easement. Examples of such rights are as follows:

- Fee title
- Transferability
- Subdivision
- Residential development potential
- Commercial development potential
- Roads
- Ponds
- Agricultural uses
- Row crop limitations
- Hunting and Fishing
- Silviculture
- Mining
- Commercial well limitations

The restrictions under the proposed CE shall be described and analyzed, specifically in relation to the impact on the "Before" highest and best use conclusion. This should be consistent with the "After" highest and best use conclusion. The logic should be clear and easy to follow.

Also, the impact of the loss of, or restriction of a certain right on value needs to be analyzed and discussed. Each right impacted should be identified and the resulting influence on value should be discussed.

## **PART B. Required General Format For Self Contained Appraisal Reports And Discussion Of Considerations Within The Format**

### **B-1.00 REQUIRED GENERAL FORMAT**

Fee appraisers who prepare appraisals to be reviewed through the Division of State Lands are required to submit a completed Bureau of Appraisal – Appraisal Checklist (See Addenda, Exhibit H). This checklist is to be placed in the addenda section of the appraisal report.

Unless otherwise stated in the appraisal services assignment, all appraisals shall be self-contained narrative reports.

The following general format is required for use in self-contained appraisals and is shown for both the single and multiple property reports in the Addenda, Exhibits A and B, respectively. Omission of any item must be explained by narrative.

1. The report shall be bound in book fashion, in the left margin in a durable cover with identification of the property on the face thereof.
2. The paper should be recycled and 8 ½ x 11 inches in size.
3. The report shall contain a Table of Contents. All pages shall be numbered and each important heading shown in the Table of Contents. (Refer to headings in Addenda, Exhibits A and B.)
4. The project name and the Bureau of Appraisal File Number shall appear in bold print on the cover and title page of the appraisal, as well as on the "Executive Summary."
5. For multiple parcel acquisitions only and remembering that the Volume I binder contains information applicable to the project as a whole, parcels valued at \$500,000, or less, should be placed in a separate Volume II binder with parcel identification tabs and any parcels valued greater than \$500,000 should be placed in a separate Volume III binder with parcel identification tabs.
6. The fee appraiser must complete the "Executive Summary" and place it at the end of the "Part One—Introduction" section of each appraisal report. In the case of multiple parcel assignments, the fee appraiser is to place the "Executive Summary" immediately behind the identification tab for each parcel in the report. The form for the

"Executive Summary" can be found in the Addenda, Exhibit D of these supplemental appraisal standards.

## **PART C. GENERAL STANDARDS OF A MISCELLANEOUS NATURE**

### **C-1.00 OWNER CONTACT**

The appraiser shall contact the property owner, applicant or designated representative by letter. The letter shall advise of the appraiser's scheduled inspection date and request the owner, applicant or a representative to accompany the appraiser, if they so desire.

A copy of the contact letter or statement that the owner, applicant or representative was contacted shall be included in the appraisal report.

### **C-2.00 CONFLICT OF INTEREST**

The appraiser shall submit an affidavit certifying that he or she has no vested or fiduciary interest in the property appraised.

It is the ethical responsibility of the individual appraiser to refuse any assignment in which he or she may hold or contemplate holding any interest or in which he or she might be influenced by any personal interest in other properties. If the appraiser is unclear on whether he or she has a conflict of interest, it shall be the responsibility of the appraiser to advise the Bureau of Appraisal of all facts in order that the Bureau may decide whether or not it would be proper for the appraiser to accept the assignment.

### **C-2.01 PROPERTY OWNER PREVIOUS CLIENT**

The Bureau of Appraisal may disqualify from consideration a proposal from an appraiser who has appraised the subject property or had the subject property owner or applicant as a previous client. Exceptions to this policy shall be made by the Bureau if the appraiser supplies a satisfactory explanation of the previous client relationship and why no conflict will result.

### **C-3.00 DATA FURNISHED TO APPRAISER**

The appraiser shall base the opinion of value on specific data provided by the Bureau of Appraisal. This data includes items such as size, dimensions, shape, title information, limitations or impediments, and tax information. Every attempt will be made to provide all available data concerning the subject property to assist the appraiser. However, due diligence on the part

of the appraiser is expected to confirm or correct data (see section A-5.00), as needed.

Where initial title work is provided the appraiser, it is often incomplete, relative to the status of oil gas and mineral rights. If due diligence on the part of the appraiser discovers additional information, a copy of the source should be provided in the appraisal report. If there could be any impact on value, it should be considered, using market data to support the conclusion. On the other hand, if the title work provided is incomplete, and if no additional information is found clarifying the status of the oil, gas and mineral rights, the appraiser cannot be expected to comment on any value impact and must assume that oil, gas and mineral rights are included in the fee simple bundle of rights.

#### **C-4.00 PUBLIC RECORDS**

The appraiser is advised that after the confidential period authorized by Chapters 253, 259 and 119, F.S. ends the Bureau may release the appraisal reports, or any part thereof, to the public under provisions of State law, such as public records law in Chapter 119, F.S. or the Sunshine Act in Chapter 286, F.S. Such laws shall supersede any statements or limiting conditions contained in the appraisal report. Prior notice to the appraiser of release by the State shall not be required.

The appraisal reports and all data therein shall, upon delivery to the Bureau of Appraisal, become the property of the Department. The Bureau of Appraisal will provide any data or exhibits from the report to any requesting parties subject to confidentiality requirements imposed by Chapter 119,253, or 259 F.S.

#### **C-4.01 COOPERATIVE EFFORT**

The appraiser may, if desired, consult or cooperate with another appraiser. The material contribution of any such person shall be acknowledged in the report. Cooperation between appraisers assigned to the project is especially encouraged and can include the sharing of data, analysis, reasoning and conclusions; however, the final value estimate shall be the responsibility of the assigned appraiser.

#### **C-5.00 EMPLOYMENT OF SPECIALIST**

In the event an appraisal assignment necessitates the estimation of improvement or engineering costs, the valuation of specialized equipment, machinery, trade fixtures, timber or mineral deposits, the appraiser may

employ a specialist or consultant as an assistant. The specialist's or consultant's report should be included in the addenda to the appraisal report.

The fee proposal must contain the consultant's fee as part of the appraisal fee. Fees are to be separately quoted in the proposal. The appraiser will be responsible for contractual relationships with the specialists or consultants they employ. For forestry consultants there are specific timber standards and selection criteria which can be found on the Bureau of Appraisal website: <http://www.dep.state.fl.us/lands/appraisal/default.htm> or by calling the Bureau.

### **C-6.00 APPRAISAL REVIEW**

Applicable law allows the Bureau of Appraisal to review or contract for the review of appraisals. The Bureau of Appraisal is responsible for this function and shall be the sole contact between the Department and the appraisers or review appraisers for all matters pertaining to appraisal or appraisal review activities.

For the acquisition of conservation lands, a technical review is required for properties valued greater than \$500,000 (Rule 18-1, F.A.C.). The technical appraisal review will be developed and reported according to the requirements of Standard 3 of the USPAP. The purpose of a Standard 3 review is to assure that the appraisal conforms to the USPAP, these Supplemental Standards, and any other requirements of the specific assignment. For the acquisition of conservation lands and for parcels with value of \$500,000 or less, a cursory review will be conducted for assurance that requirements of the assignment were met.

For Board acquisition appraisals for conservation lands, every 20th appraisal with a value of \$500,000 or less, a Standard 3 review of the USPAP will be developed and reported, for quality assurance purposes.

For state-owned land, appraisal reviews are to be conducted by a private sector appraiser or by a Bureau staff appraiser.

### **C-6.01 FIELD REVIEW**

A field review shall be conducted on certain appraisal reports pursuant to applicable Board actions, law or contract provisions.

The review appraiser shall personally inspect the property appraised and the pertinent comparable sales or other properties on which the appraiser placed

major reliance in arriving at an opinion of value, unless exempted from doing so by the Bureau of Appraisal. The review appraiser can also verify market data, confirm market opinions or assumptions and gather information pertinent to the appraisal.

### **C-6.03 REVIEW QUESTIONS AND APPRAISER'S RESPONSE**

It is the review appraiser's duty to communicate with the appraisers in an attempt to correct deficiencies, inaccuracies, provide additional clarification or to reconcile differences in appraisal techniques or premises between appraisal reports when there are two appraisals for a subject property.

Although the review appraiser may verbally discuss review questions with the appraiser, substantive comments or requests for clarification or additional support shall be communicated to the appraiser in writing and copied to the Bureau.

The appraiser shall promptly respond to the review appraiser, providing a written response to each item in the written request.

### **C-6.04 CORRECTIONS OR CHANGES**

The appraiser shall respond in a timely manner pursuant to the appraisal assignment. If corrections or reconsiderations result in changes in the appraisal report, the appraiser shall furnish the appropriate number of corrected or revised pages to allow all copies of the report to be complete. All clarifications, corrections or revisions of existing data, or resulting from reconsideration of data, which would have been available to the appraiser during preparation of the original report, shall be made at no additional cost to the Department.

The appraisal report shall not be approved by the review appraiser until all review questions or requests have been answered by the appraiser to the review appraiser's satisfaction.

# **ADDENDA**

## **EXHIBIT A - SINGLE PARCEL APPRAISAL FORMAT**

### **Part One—Introduction**

Title page (Project Name and B/A File Number)  
Letter of transmittal  
Table of contents  
Certification of value  
Executive summary

### **Part Two—Premises of the Appraisal**

Scope of the appraisal  
Assumptions and limiting conditions  
    Special Assumptions  
Purpose and use of the appraisal  
Definition of value and date of value opinion  
Property rights appraised

### **Part Three—Presentation of Data**

Identification of the property, legal description  
Area, city, neighborhood, and location data  
Site data  
    Jurisdictional wetlands, flood hazard area discussion, access, oil/gas & mineral rights  
Description of improvements  
Land Use and Zoning  
Taxes and assessment data  
Five-year (5 year) ownership history of the subject  
    Prior sales and current offers or listings

### **Part Four—Analysis of Data and Conclusions**

Highest and best use of land as though vacant  
Highest and best use of the property as improved (if improvements are present)  
Land value  
Sales comparison approach  
    Value impact(s) of special assumptions  
    Government/private sector sales segregated  
    Photographs of comparable sales  
    Sketches of comparable sales  
Cost approach  
    Sketches of major improvements  
Income capitalization approach  
Reconciliation of value indications into a final opinion of value  
Qualifications of the appraiser

### **Addenda**

Detailed legal description, if not included in the presentation of data  
Detailed statistical data (if any)  
Leases or lease summaries (if any)  
Owner contact letter  
Appraisal Checklist  
Other addenda to the specific report

## **EXHIBIT B - MULTIPLE PARCEL APPRAISAL FORMAT**

(If appropriate, Part One, Two, Three and Four can be bound in one volume.)

### **Volume I – Data Book**

#### **Part One – Introduction**

Title Page  
Letter of Transmitted  
Table of Contents  
Assumptions and limiting conditions  
Qualifications of the appraiser

#### **Part Two – Factual Data**

Scope of appraisal assignment  
Intended Use and Intended User of appraisals  
Definition of market value  
Definition of rights appraised  
Property inspection  
Area, city, neighborhood, and location data

#### **Part Three – Presentation of Data**

Marketability Analysis – Discussion of market  
Elements of comparison  
Comparable market data – sale write-ups, aerial map or photographs, and copies of deeds  
Other appropriate data, such as land use and zoning designations, rental capitalization rates and property restrictions relevant to the project as a whole

**Addenda** (Include those applicable to the project as a whole.)

### **Volume II – Specific Parcel Data and Analysis (Additional volumes as needed, depending on the number of parcels in the assignment.)**

#### **Part Four – Parcel Data, Analysis and Conclusions (for each tabbed parcel or ownership)**

Identification of property  
Legal description  
Site data (size, shape, topography, access, oil/gas & mineral reservations)  
Assessment and taxes  
Ownership history  
Flood hazard (zone) data  
Future Land Use and Zoning  
Description of improvements]  
Maps, sketches of land and improvements  
Property photographs  
Highest and best use – as vacant and as improved  
Special assumptions (requires prior Bureau of Appraisal approval)  
Approaches to value – cost, sales comparison and income approaches as appropriate  
Reconciliation of value indications  
Final opinion of value  
Certification of value  
Addenda (Include only those that are parcel specific within each tabbed parcel section. Please see the list of addenda items in the Single Parcel Appraisal Format.)

**EXHIBIT C - SALES (MARKET DATA) FORMAT**

(Headings not pertinent may be omitted)  
(Headings may be placed in left column alignment if desired)

APPRAISERS REFERENCE NO.:

PROPERTY TYPE:

LOCATION:

BRIEF LEGAL DESCRIPTION:

O.R. BOOK/PAGE:

GRANTOR: (Lessor)

GRANTEE: (Lessee)

LAND SIZE:

ACCESS: (Describe legal and physical access)

COMPREHENSIVE LAND USE AND ZONING:

PROPERTY DATA:

PRICE: (Sale, Offering, Rent, etc.)

DATE (OF TRANSACTION):

PROPERTY RIGHTS CONVEYED: (Outstanding oil, gas or mineral interests, etc.)

TERMS: (Financing, Lease, etc.)

VERIFICATION: (by whom, with whom, date contacted and telephone number)

CONDITIONS OF SALE:

PRESENT USE:

HIGHEST AND BEST USE:

INTENDED USE: (If no immediate development was planned, include any information revealing the buyer's perception of development pressure or anticipated holding period as a speculative investment property.)

COMMENTS: (Other pertinent information. Do not include analysis or comparison to subject on this page. Attach separate page if analysis or comparison discussion is to be included here on each sale.)

SKETCH OF COMPARABLE: (On facing page, if possible, with photo.) (See A-8.04)

PHOTO(S): (On facing page, if possible, with sketch of comparable. An aerial photo may be substituted.) (See A-8.05)

DEED: (Attach a copy of vesting deed for this transfer of ownership.)

Prior Sale Information: (Report any prior sales within the previous 3 years.)

**EXHIBIT D - EXECUTIVE SUMMARY**  
**C O N F I D E N T I A L**

Project Identification: Name:  
B/A File No.

Parcel Identification: Parcel No.  
Owner's Name:

Appraiser: Name of appraiser(s) who prepared report and company's

Dates: Date of Value:  
Date of Reports:

Interest Appraised: Fee Simple  
Conservation Easement

Parcel Size: Gross Acreage:  
Upland Acreage:  
Jurisdictional Wetland Acreage:

Ownership History,  
Listings, Contracts

Parcel Access: Legal (road, easement, etc.)  
Physical (road, trail, none, etc.)

Land Use/Zoning: Residential Density Allowed  
Name of Future Land Use and Zoning Designations  
Typical/Legal Use(s):

Assessed Value:

Utilities: Utilities available; how far from site (water, sewer, electric,  
telephone)

Flood Zone Information: In or out of 100 or 500 year flood hazard zones(s)

Mineral Rights: Rights reserved (mineral, gas, oil, etc.)  
Type of access  
Exploration allowed  
Impact on value

|   |  |
|---|--|
| <u>Easements:</u>   | Type and area encumbered<br>Impact on value:   |
| <u>Other Encumbrances:</u>  | Type<br>Impact on value  |
| <u>Highest and Best Use:</u>  | As vacant: describe economic use<br>As improved: describe economic use   |
| <u>Present Use:</u>   | Vacant commercial land   |
| <u>Opinion of Value:</u>  | Total value:<br>Land value:<br>Improvement(s) value; e.g., building<br>Timber value<br>Conservation easement<br>Fee simple value<br>Value with easement<br>Sales Comparison Approach:<br>Cost Approach:<br>Income Approach/Discounted Cash Flow: |
| <u>Special Assumptions or<br/>Limiting Conditions Under<br/>Which Value(s) Are<br/>Based:</u> | State briefly what they are<br>Affect on value   |
| <u>Unit Values:</u>   | Price/unit of comparison: \$/acre, \$/square foot,<br>\$/developable unit, \$/upland acre, \$/jurisdictional wetland<br>acre, etc.   |
| <u>Sales Data:</u>  | Dollar range per unit of comparison<br>Prior to adjustments:<br>After adjustments:   |

**Memorandum**      **Florida Department of  
Environmental Protection**

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**TO:                    DEP Approved Appraisers**  
**FROM:                Bureau of Appraisal, Division of State Lands**  
**SUBJECT:            Instructional Memo:**  
**Boating Channel Easement Appraisal Assignments Across**  
**Sovereignty Submerged State Land**

One methodology for the valuation of appurtenant easements is the “before and after” analysis, where the difference between the two values represents the total value attributable to the easement. For use in assisting the establishment of the easement fee charged by the state, this value needs to be allocated into two separate measures of value<sup>1</sup>:

1. A value for the area of the easement proper; (i.e. A value of the sovereignty submerged land that is encumbered by the easement.)
2. A measure of the enhancement or profit realized by the property to which the easement is attached.

The total fee charged by the state for a sovereignty submerged land easement is established by an appraisal which provides these two allocated measures of value. This memorandum addresses primarily the easement value allocation of such an appraisal assignment. However, it should be understood that only a portion of the remaining enhancement value allocation becomes part of the fee that is charged by the state.

Due to the fact that sovereignty submerged lands are not actively traded on the open market, little or no market data has been available for direct sales comparison approaches to value. Therefore, many varied approaches and methodologies have been used with varying degrees of meaningfulness, timeliness and in many cases, with appraisal fees that exceed the value of the easement. It is granted that complexities are involved, especially when the appraiser is asked to measure “enhancement” to the upland parcel that the easement will serve, as well as the differences inherent to the type of use proposed (e.g. bridges for upland access, channels for boating access that may require dredging, breakwater structures, etc.).

However, when the submerged land has boating utility and only for the direct valuation of the easement area<sup>1</sup> the following methodology (scope of work) can be used.

- A. Based on the market acceptance of government established lease rates for sovereignty submerged land around the state, these lease rates provide a basis for the easement valuation methodology.<sup>2</sup> Therefore, appraisers should be aware of lease information, online at [gisweb.dep.state.fl.us/dsl/florida/flpro](http://gisweb.dep.state.fl.us/dsl/florida/flpro), or from the Department of Environmental Protection, Division of State Lands, Bureau of Public Land Administration for any area/neighborhood around the state.
- B. An analysis of the lease data in the vicinity of the subject can then be utilized; but not to estimate a market lease rate for the subject, rather, as the basis for a location adjustment to the base rate for any apparent neighborhood demand, as follows:
  1. The lease rate structure results in two billings to the leaseholders that need to be considered:
    - a. The base rate, which is the same throughout the state and is billed at the beginning of each lease year. (\$0.141260 per square foot as of March 1, 2007 with an annual CPI adjustment on March 1, each year).

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<sup>1</sup> See Rule 18-21.011 Florida Administrative Code website: ([www.flrules.org/Default.asp](http://www.flrules.org/Default.asp)).

<sup>2</sup> See the Appraisal Journal , July 2001, pg 296 article “Valuation of Submerged Lands” attached, that outlines the use of regulatory practices as a source of data.

- b. The supplemental billing rate, an amount above the base rate wherein 6% of the reported gross revenues (or income) of the facility exceeds the base rate, which is billed after the annual anniversary date of the lease.
    - i. Income is defined as “the gross revenue derived directly or indirectly from the use of sovereignty submerged lands such as slip rental, lease or sublease fees; dock or pier admission fees; club memberships, stock ownership or equity interest in activities where an increased revenue is attributable to the use of the sovereignty submerged lands or “sales” of slips. However, gross revenue shall not include pass-through fees such as fees for utility services, sale of the facility or sales of products not occurring on sovereignty submerged lands. Gross revenue shall include all future payments made for the transfer of the interest in a slip originally obtained from the Board's lessee, including transfer of slip rights by slip sublessees, slip "sellers", slip interest transfers, new club memberships, and other similar transactions.

This was adopted when the Board of Trustees recognized that all submerged land is not equal in value, relative to neighborhood factors that display varying degrees of demand for boating access that typically drives the dockage fees or slip rates charged by marina operators.

  - c. In other words, the total lease rate is the base rate or 6% of gross revenue, whichever is greater.<sup>1</sup>
2. Comparisons between leased facilities and areas serviced by the proposed subject easement should also take into consideration other factors that could influence value, such as the size of the boats accommodated relative to water depth at low tide, distance from the open waters of the ocean or gulf, obstructions such as bridges that might limit clearance for under-passing boats at high tides, etc.
    - a. Other factors responsible for supplemental lease rates exceeding the base rate must be viewed only relative to having an impact on the perceived value of the submerged land's water dependent uses.
      - i. One example of a non-water dependent use is storage boxes constructed on the docks at the location of each slip. A lease premium for this use may or may not reflect market demand for boating services in a given part of the state.
      - ii. On the other hand leased land with docks to an upland restaurant may never report income, due to the fact that docking at the facility is free and profits are a function of the restaurant's menu.
  3. Reconciliation of the lease data should be based on this “location” adjusted indication of the base rate, with a final adjustment for the relative degree of shared use rights to be encumbered from a practical viewpoint.
    - a. It must be understood that lease rates are intended for the lessee's exclusive, preemptive uses, not shared uses. The easements, on the other hand, are intended to recognize shared uses with the public. From a practical viewpoint, this may or may not impact value.
    - b. As part of the regulatory environment, Chapter 18-21.011(1)(b)2., F.A.C. applies a 30% discount factor if a facility offers the majority of its dock space (90% or more) to the public on a first come – first served basis. This lends support to the discounting of value for the leasing of submerged land, in order to recognize the reduced rights for an easement area, which is non-exclusionary or “open to public use”. In contrast, leased areas are exclusive to the tenant's use in service to the boating public.

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<sup>1</sup> See Rule 18-21.011 Florida Administrative Code website: ([www.flrules.org/Default.asp](http://www.flrules.org/Default.asp)).

4. The reconciled and discounted rate applicable to the subject should then be converted to a single present value for the proposed easement, typically with a 25-year term, unless another term is requested by the state.

a. The discount rate should take into consideration the fact that lease payments to the state can include a degree of risk for payments from the private sector.

C. This is one methodology for allocating an indication of easement value that can suffice in many cases where boating access is to be used. Any secondary methodology may be used, if market supported, and approved in any scope of services proposed by the appraiser.

D. The above scope of work will involve visiting the facilities from which the lease data is taken and using these inspections to help analyze and reconcile the data in a meaningful way to obtain an indication of value for submerged land, for use in establishing a fee that could be charged to the applicant requesting the easement.

E. Enhancement, therefore, is the remaining allocated portion of value derived from the methodology that involves a “before & after” (or “with & without”) analysis discussed above, after subtracting the value allocation to the easement area proper, outlined in item #2 above.

It should be noted that this methodology does not suggest a valid basis for a fee simple valuation of sovereignty submerged land and cannot be used for an estimate of a leased fee interest in said lands, due to the fact that the lease rate is established by government.

## Valuation of Submerged Lands

### Abstract:

This article addresses recognized valuation techniques based on property rights inherent with the ownership of real estate. The public lands are held in fee simple estate until an encumbrance is created through a lease or other vehicle. The bundle of rights is allocated to the lessor (public domain) and the lessee (private use), which establishes a leased fee estate when a usage fee (lease amount) is created for the tidal lands.

These techniques are the subject of this article.

by Lance W. Doré, MAI; P.S. Mitchell, PhD; and Janine L. Austin

"Submerged lands" are public lands lying below tidal waters in the continental United States. These lands cannot be owned by private entities; they are owned by the states adjacent to the submerged lands. However, the tidal water above the submerged land may be used by private entities. This potential use by private entities has generated the need for a method of valuing submerged lands by private entities for leasing purposes.

Due to the nature of the market, valuation is best accomplished by means other than the sales comparison approach. However, this approach may suggest a value for the improvements to the land and establishes the typical rent-setting procedures.

Each state values its submerged land differently. There is no universal formula; there are only broad generalizations that apply to all tidal lands. This makes adherence to the principles of sound appraisal practice critical in the final analysis. States apply varying percentages of the upland value to the submerged land based on the laws and procedures followed by the state. Customarily, the percentage of upland value depends on use. Generally, a higher value will be placed on a use that is more water-dependent. This analysis is then used to establish the appropriate rental rates for the use of the submerged land. This is done with recognized income analysis from the market using a capitalization rate for the year's revenue.

The methodology for submerged lands may be summarized as follows. First, the upland is valued based on recognized sales comparison techniques applied indirectly. Second, a rental survey is completed of public jurisdictions that lease submerged land to private entities, and a submerged fee rate is reconciled. The submerged fee rate, when applied to the upland value, provides an implied submerged land value. Third, a separate sales comparison approach is completed to determine a land capitalization rate. This land capitalization rate is then applied to the implied submerged land value to determine the annual lease payment for use of the tidal water above the submerged land.

### The Public Trust Land Concept

Understanding the concept and history of submerged land is critical, since these define issues related to ownership and use of the land. It is also critical to understand the interests, benefits, and rights inherent with the concept of submerged land and how these are considered in determining the final value.

The concept of public trust land, and the peoples' right to access to such lands, is thoroughly entrenched in western culture and American legal history. It was defined as early as 533 AD in the Institutes of the Roman Emperor Justinian, which dealt with the Roman law applying to air, running

From "*The Appraisal Journal*", July 2001

water, the sea, and the seashores.<sup>1</sup> By the time of the Magna Carta in England, the crown held public lands in trust for the people.<sup>2</sup> The concept of public rights to public water was observed in America in 1641 with the Great Pond ordinance of the Massachusetts Bay Colony. This ordinance guaranteed the right to fish and fowl in ponds greater than ten acres, along with the freedom to pass on private property to gain access to them.<sup>3</sup>

When the original thirteen states took over sovereignty of their land from the British after the Revolutionary War, the states became the owners of the public lands underlying "navigable waters."<sup>4</sup> The concept of public trust land was articulated in 1821 in the New Jersey case of *Arnold v. Mundy*, in which the doctrine of public trust land was extended and clarified. In this case the court ruled that under "natural, civil, and common law the sovereign in trust reserved those lands for the people of the state."<sup>5</sup> The sovereign ownership of public lands was articulated again in 1869 with *Illinois Central Railway v. Illinois*. The United States Supreme Court invalidated the ownership rights of the Illinois Central Railway to the deeded bed of Lake Michigan along the Chicago waterfront.<sup>6</sup>

### Laws Governing Submerged Lands

There are two bodies of well established custom and law relating to water rights in the United States. The first relates to nontidal, usually potable, water found in rivers, streams, wells, and lakes. These water rights generally have been considered as real estate, running with the land. There is a fairly well-developed and orderly market for these nontidal property rights in the United States, as well as customary valuation techniques. This article does not consider nontidal water rights and their valuation, but rather focuses on tidal waters.

The second body of custom and law relates to waters over submerged lands.<sup>7</sup> The right to use the waters above these offshore, submerged lands is generally held as public trust. Further, these tidal waters are not completely bounded by land and are subject to federal law.

The definition and ownership of public trust land beneath tidal, submerged, or navigable waters is set forth in the United States Code, Title 43, which defines sovereign submerged land as, "all lands within the boundaries of each respective state which are covered by nontidal waters that were navigable under the laws of the United States at the time such state became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as modified by accretion, erosion, and reliction."<sup>8</sup>

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<sup>1</sup> Ralph W. Johnson, Craighton Goepple, David Jansen, and Rachael Paschal, *The Public Trust Doctrine and Coastal Zone Management in Washington State*, prepared for the Shorelands and Coastal Zone Management Program, Washington State Department of Ecology. Version 1.0 (October 1991): 7.

<sup>2</sup> *Ibid.*

<sup>3</sup> Jan S. Stevens, deputy attorney general of California, *The Public Trust Doctrine in California*.

<sup>4</sup> A commonality in law exists between all states in that each was given the ownership of public trust lands as they entered the union based on the United States Constitution, Article IV, Section 3, of the Equal Footing Doctrine and the United States Code. The original thirteen states took sovereignty over their land from the British after the American Revolution. Those states became the owners of the land underlying what are termed navigable waters as well as the land underlying tidal waters. The courts ruled that other states entering the union had the same rights as the original thirteen states.

<sup>5</sup> 6 N. J. L. 1, 76-77 (1821).

<sup>6</sup> 146 U.S. 387 (1892).

<sup>7</sup> 43 U.S.C. § 1301 defines the property that is the subject of this article by providing that "lands beneath navigable waters" means:

1. all lands within the boundaries of each of the respective states which are covered by nontidal waters that were navigable under the laws of the United States at the time such state became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

2. all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such state; and

3. all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters.... The term "lands beneath navigable waters" does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not [identified] in connection with the public survey of such lands under the laws of the United States.

<sup>8</sup> 43 U.S.C. § 1301(a)(1).

The land is further described as being held in trust for the use and benefit of the people of the state. The United States Code clarifies that the land may be "permanently or periodically covered by tidal waters from the line of mean high tide out three geographical miles distant from the coast or the Gulf of Mexico."<sup>1</sup> The land also may be "filled in, made, valuation of submerged lands or reclaimed lands."<sup>2</sup> The United States Code excludes streambeds lawfully conveyed to private citizens. Ownership, and the right and power to manage, administer, lease, develop, and use these lands is also established in the United States Code. These submerged lands are held in trust for the use and benefit of the people of the particular state, as set forth in Title 43, U.S. Code, Section 1311.<sup>3</sup>

Most states have included definitions of public lands and the rights of public access to these lands in their constitutions and codes. For example Article X, Section 4, of the California State Constitution "guarantees the free navigation of the state's water." The power to govern over these lands is given to the State Lands Commission. These codes also define the authority of the State Lands Commission. Article 9 of the code defines a lease involving grant tide and submerged land, while Sections 2801-2803 explain procedure, commission criteria, and approval criteria respectively.

The Oregon State Constitution, Article 8, Section 5, grants the Division of State Lands the responsibility of overseeing public trust lands. Oregon Revised Statute places all tidally influenced and navigable waterways under the jurisdiction of the Division. The Public Trust Doctrine of Oregon provides that the state must hold submerged and submersible land in trust for the benefit of all the people, and that the general public has a right to fully enjoy these waters for most uses.

Washington State's Constitution, Article XVII, declares state ownership of the shores of all navigable water, except where federal patent was perfected prior to statehood. Article XXVII, Section 2, invalidates prior acts of the territorial legislature granting tidelands to railroad companies, establishing the riparian rights of the public.<sup>4</sup> Article XV of the state constitution establishes harbor boundaries, and places a restraint on the disposition of beds underlying navigable waters outside certain harbor lines.

## Legal Background

Further clarification of the boundaries on which a state may have jurisdiction is detailed in the federal Outer Continental Shelf Lands Act of 1953. This statute defines the Outer Continental Shelf (OCS) as all submerged lands lying seaward of state coastal waters (three miles offshore) that are under United States jurisdiction. The statute authorizes the secretary of the interior to promulgate regulation to lease the OCS in an effort to prevent waste and conserve natural resources and to

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<sup>1</sup> 43 U.S.C. § 1301(a)(2). The Outer Continental Shelf (OCS) Lands Act of 1953 established U.S. ownership of the lands beyond the three-mile point and stipulates the Department of the Interior as the regulatory agency in preventing waste and conserving nature by obtaining the highest "responsible bidder." An amendment to the OCS Lands Act provides for the cancellation of leases if the use is injurious to any marine life or habitats.

<sup>2</sup> 43 U.S.C. § 1301(a)(3).

<sup>3</sup> In 43 U.S.C. § 1311, the United States established "...title and ownership of lands and resources; management, administration, leasing, development, and use of such lands as follows: (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective states, and the natural resources [including ... oil, gas, and all other minerals, fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power ...] within such lands and water, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable state law be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective states or the persons who were on June 5, 1950, entitled thereto under the law of the respective states in which the land is located, and the respective grantees, lessees, or successors in interest thereof ... The right, powers, and titles hereby recognized, confirmed, established and vested in and assigned to the respective states and their grantees are subject to each lease executed by a state ...." The terms "grantees" and "lessees" were broadly defined, including all political subdivisions, municipalities, public and private corporations, and other person holding grants or leases from a state or its predecessor sovereign, if valid. Title 43 retains the authority and rights of the United States respecting navigation, flood control, and the generation of power.

<sup>4</sup> Johnson, Goeppe, Jansen, and Paschal, 11.

grant leases to the highest responsible bidder as determined by competitive bidding procedures.<sup>1</sup> Thus, rights to and ownership of submerged land and the use of the tidal water are within the public domain. These rights can, however, be leased by the state to private entities for economic, social, and environmental purposes. Examples of purposes upon which leases for private uses are based include:

- Boat docks, marinas and off-shore storage
- Shipping lanes for trade and commerce
- Communication easements for cable, fiber optics, or other
- Recreation (boating, swimming, special events)
- Manufacturing and harvesting
- Mitigation

There are recognized valuation techniques based on property rights inherent with the ownership of real estate. The public lands are held in fee simple estate until an encumbrance is created through a lease or other vehicle. The bundle of rights is allocated to a lessor (public domain) and the lessee (private use), which establishes a leased fee estate when a usage fee (lease amount) is created for the tidal lands.

### **Submerged Land Valuation Methodology**

The methodology to determine the value of submerged land and corresponding lease rates starts with the highest and best use analysis. This is consistent with the accepted highest and best analysis as though vacant and specific to the upland. However, local ordinances and uses of tidal land vary among individual states and ports. The value may be found by applying the direct sales comparison or income approach based on an investigation of various port authorities' lease pricing schedules. While differences in lease pricing schedules occur between each port area, the underlying valuation principles are the same in the selection and analysis of the comparable data regarding the legal, physical, financial, and maximally productive uses. Although regional differences do exist, a common formula can be used to determine the value of submerged land leases and ownership.

The sales comparison approach can only be used indirectly, since there are few, if any, comparable sales of actual submerged lands. This is compounded by the fact that if actual sales do occur, they are typically inter-agency transfers within the public sector and are less reliable because of their non-economic use. Therefore, submerged land is usually valued as a percentage of the upland fee simple value.

In valuing the upland, the sales and/or listings of properties similar to the subject's upland characteristics are used to indicate and provide a basis for determining the upland value. "Upland" is defined as land that is directly adjacent to the submerged land in question.

As in typical land appraisals, comparisons are made between the subject land and comparable properties. Percentage or dollar adjustments are then made to the selling price of each comparable for property rights, financing, time of sale, and unusual sales conditions. Qualitative or quantitative adjustments are made for physical differences between the comparable and the subject properties.

A range of values is the result of this approach. The appraiser must then correlate the range into a final indicated value by selectively rating the comparables to their overall comparative values. Therefore, if an upland fee simple value is supported at \$22.00 per square foot and the appropriate

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<sup>1</sup> Later amendments to the Outer Continental Shelf (OCS) Lands Act were detailed in 1978 where Title II provides for the cancellation of leases or permits if continued activity is likely to cause serious harm to life, including fish and other aquatic life. It also stipulates that economic, social, and environmental values of the renewable and nonrenewable resources are to be considered in management of the OCS. Issues regarding the timing and leasing of activities are to be based on several factors, including the relative environmental sensitivity and marine productivity of different areas of the OCS.

From "*The Appraisal Journal*", July 2001

submerged fee rate (see discussion below) is 25%, the indicated value for the submerged land would be:

$$\$22.00 \times 0.25 = \$5.50 \text{ per square foot}$$

The submerged fee rate varies and is based on intended or current uses. If the submerged land use derives income and the adjacent upland is dependent on the operation, then the submerged fee rate is placed at the higher end of the range. If the adjacent upland use is less dependent, the submerged fee rate is placed at the lower end of the range. This co-dependency is consistent with most port authorities.

To determine the submerged fee rate, a complete market survey is applied to the upland value. The submerged fee rate is determined by surveying public agencies, including port authorities and state agencies. As noted, the rates will vary based on the interdependence of the upland use and the submerged land (tidal water) use.

For example, if the submerged land is being used for boat docks that derive income and the adjacent upland is dependent on the boat dock operation (such as a yacht club), the submerged fee rate will be placed at the higher end of the range. In some jurisdictions, the interdependence is considered 100%, and therefore, the submerged fee rate is 100% of the upland value. In this instance, the preserved submerged land value is the same as the reconciled upland value.

If the adjacent upland use is less dependent on the submerged land, the submerged fee rate is placed at the lower end of the range. This "dependence" structure is consistent with all agencies. Some exceptions may apply on a jurisdictional basis, but are not common.

Examples of actual submerged fee rates from port districts in the western United States are listed in Table 1. Overall, submerged fee rates were found to range from 25% to 50%, with the majority falling between 40% and 50%.

By applying the submerged fee rate to the upland value, the submerged land is valued with market data. However, an additional step is applied because submerged land cannot be owned by private entities. It can, however, be leased by private entities from the public agency that owns the submerged land. The lease amount reflects the usage fee to the private entity.

To determine the lease amount, a lease rate is applied to the land. The land capitalization rate (lease rate) is based on the market and determined through a sales comparison approach. The sales comparison approach uses sales of land that sold with ground leases. In doing so, an appropriate land capitalization rate can be supported. The land capitalization rate is then applied to the submerged land value to determine the annual lease payment for using the tidal water. The valuation scenario in Table 2 can then be applied.

## **Conclusion**

Submerged lands are defined as public lands that lie below tidal waters in the continental United States.

| <b>Table 1 Submerged Land Fee Rates</b> |  |
|---|--|
| Location                                | Submerged Fee Rate<br>(Reciprocal of Discount) |
| San Diego                               | 25–35%   |
| Long Beach                              | 50%  |
| Los Angeles                             | 33%  |
| Oakland                                 | 50%  |
| Tacoma                                  | 30–50%   |

  

| <b>Table 2 Submerged Land Value</b> |                     |
|-------------------------------------|---------------------|
| Upland value (sales comparison)     | \$10.00 per sq. ft. |
| Submerged fee rate (rental survey)  | 50%                 |
| Implied submerged land value        | \$5.00 per sq. ft.  |
| Land cap rate (sales comparison)    | 10%                 |
| Annual rental rate                  | \$0.50              |

Submerged lands cannot be owned by private entities; they are owned by the states adjacent to the submerged lands. However, the tidal water above the submerged land can be used by private entities. This use has created a methodology for valuing submerged lands to determine the public's right to lease land for private use.

Because of the nature of the market, valuation is best accomplished by means other than the sales comparison approach. However, this approach may suggest a value for the improvements to the land. Customarily, the value of submerged land is a varying percentage of the upland value, depending on use. Generally, a higher value will be placed on a use that is more water dependent. Sometimes a capitalization rate is applied for the year's revenues, typically stated in the lease. Each state values its submerged land differently, applying a range of percentages of the upland value to its submerged land based on the laws of the state. Therefore, there is no universal formula, only generalizations that one could apply to all tidal lands.

The methodology suggested in this article may be summarized as follows. First, the upland is valued based on recognized sales comparison techniques applied indirectly. Second, a rental survey is performed of public jurisdictions that lease submerged land to private entities, and a submerged fee rate is reconciled. The submerged fee rate, when applied to the upland value, provides an implied submerged land value. Third, a separate sales comparison approach is completed to determine a land capitalization rate. This land capitalization rate is then applied to the implied submerged land value to determine the annual lease payment for use of the tidal water above the submerged land.

**Lance W. Doré, MAI**, is a partner in the San Diego office of Integra Realty Resources. He is a national instructor and serves as a member of the International Relations committee for the Appraisal Institute. He has specialized in the valuation of unique lands for the past 15 years. Contact: Integra Realty Resources-San Diego; (619) 744-4040; email: ldore@irr.com.

**Phillip Mitchell, PhD**, was a real estate economist and appraiser specializing in applications of economics to real property interests, especially with respect to valuation and evaluation studies. Dr. Mitchell held a master of science degree in business economics and finance, and a PhD in business administration from the Anderson School of Management at UCLA. Dr. Mitchell has published several articles in the *Appraisal Journal*, *Journal of Property Tax Management*, *Property Tax Journal*, *Real Estate Issues*, and *Valuation*.

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\*This article is printed in memory of Phillip Mitchell, who passed away before this final publication.

**EXHIBIT F - FORM FOR IDENTIFYING APPRAISAL SPECIALTY AREAS**  
**FOR WHICH COMPETENCY RULE OF THE USPAP IS MET**

Name: \_\_\_\_\_

**Check the boxes that apply and provide the most recent appraisal assignment project name, county, and year of date of value.**

- 1- Mineral Resources & Mining Property  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 2- Timber Land & Resources  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 3 – Corridor/Right of Way Land (Proposed and Existing)  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 4 – Conservation Easements  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 5 – Developments of Regional Impact  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 6 – Environmentally Contaminated Property  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 7 – Properties with known Regulated Species Present  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 8 – Urban Improved Property  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 9 – Properties with Water Dependant Uses (Marinas, Fish Camps, Sovereign Land Issues, etc.)  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 10 – Partial Interests (access or utility, upland or submerged land easements, aerial fly zones, etc.)  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 11 – Appraisals under Federal Standards  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 12 – Property Impacted by Historic or Archaeological Areas  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 13 – Agriculture Specialty Property (citrus, sugar cane, sod, etc.)  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 14 – Springs  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_
- 15 – Other:  
Project: \_\_\_\_\_ County: \_\_\_\_\_ Year: \_\_\_\_\_

Signature

Date

# Florida Department of Memorandum **Environmental Protection**

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**TO: Appraisers Conducting Assignments through the DEP**  
**FROM: Bureau of Appraisal**  
**SUBJECT: Instructional Memo: Exchanges and Appraisal Methodology**

Appraisals conforming to Federal Guidelines need to discuss a larger parcel and any damages that might result to the remainder, particularly for partial acquisitions.

For exchanges, though, the “Yellow Book” Standards do a 180 degree turn on this issue. Note the following excerpt from Section D-7 of the federal standards:

“The major technical difference between appraisals prepared for federal land exchange purposes and those typically prepared under these Standards relates to the appraisal of multiple tracts and the appraiser’s determination of the larger parcel. In the typical acquisition appraisal, the appraiser will apply the tests of unity of ownership, of unity of highest and best use, and of contiguity or proximity as it bears on unity of use in determining the larger parcel. However, for the purposes of an exchange appraisal the tracts to be appraised are defined in the property description contained in the *agreement to initiate an exchange*. (ATI) Even if the property described in the ATI is part of a larger contiguous ownership that clearly has a unitary use, the lands outside of the property described in the ATI should not be considered by the appraiser in either larger parcel determination or in reaching a conclusion of highest and best use.”

Relative to the above, the statement is made:

“It is important, ... for the appraiser to recognize that the same method of valuation must be utilized for both the federal and non-federal lands”

And finally:

“Because of the complexity of appraising multiple tracts of land for exchange purposes and the fact that their treatment is often fact specific, it is essential that agencies provide clear written instructions to the appraiser in this regard, and that the appraiser insist upon such instructions, at the initiation of the appraisal assignment.

For exchange appraisals, this methodology is to be incorporated by the appraiser.

**EXHIBIT H - BUREAU OF APPRAISAL - APPRAISAL CHECKLIST**

**INSTRUCTIONS: THIS CHECKLIST IS TO BE USED BY APPRAISERS WHEN PREPARING APPRAISAL REPORTS FOR STATE LAND. ALL ITEMS ON THIS CHECKLIST MUST BE MARKED.**

**ITEMS THAT ARE MARKED "NO" MUST BE NARRATIVELY ADDRESSED WITHIN THE BODY OF THE COMPLETED APPRAISAL REPORT.**

**THE CHECKLIST IS TO BE INSERTED IN THE ADDENDA OF THE APPRAISAL REPORT.**

## BUREAU OF APPRAISAL - APPRAISAL CHECKLIST, PART ONE

### GENERAL — VACANT LAND

|   |  | Yes | Page No. | No  | N/A |
|---|--|-----|----------|-----|-----|
| 1 | Does the appraisal include a completed copy of the Bureau of Appraisal's "Appraisal Checklist?" (the appraiser is required to indicate compliance with specific requirements by noting which page number(s) of the appraisal contain required minimum information) [Bureau of Appraisal, Supplemental Appraisal Standards for Board of Trustees Land ", Page 42] | [ ] | [ ]      | [ ] |     |
| 2 | Is a completed "Executive Summary" included for each parcel and/or opinion of value?   | [ ] | [ ]      | [ ] |     |
| 3 | Does the appraisal follow the recommended general format for narrative appraisal reports? (this format should be used by the fee appraiser as a general guide) [Bureau of Appraisal, Supplemental Appraisal Standards for Board of Trustees Land ", Pages 18, 25 and 26]   | [ ] |          |     |     |

### PREMISES OF THE APPRAISAL

|    |   |     |     |     |  |
|----|---|-----|-----|-----|--|
| 4  | Is there a description of the extent of the process (scope) of collecting, confirming and reporting data?   | [ ] | [ ] | [ ] |  |
| 5  | Is the Bureau of Appraisal's definition of market value or the current USPAP definition used? [Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 7]   | [ ] | [ ] | [ ] |  |
| 6  | Is the intended use (function) of the appraisal identified?   | [ ] | [ ] | [ ] |  |
| 7  | Are the property interests (rights) appraised identified?   | [ ] | [ ] | [ ] |  |
| 8  | Does the appraisal express the estate which existed as of the date of appraisal and any Extraordinary Assumptions approved by the Chief of the Bureau of Appraisal or assignee (e. g. – Fee Simple, Leased Fee, Easement, Fee subject to---)? | [ ] | [ ] | [ ] |  |
| 9  | Does the appraisal report consider whether a fractional interest, physical segment or partial holding contribute pro rata to the value of the whole?  | [ ] | [ ] | [ ] |  |
| 10 | Are the effective date of the appraisal and the date of the appraisal report stated?  | [ ] | [ ] | [ ] |  |

**Bureau of Appraisal - Appraisal Checklist****Page 2**

|   |  | Yes | Page No. | No  | N/A |
|---|--|-----|----------|-----|-----|
| <b>PRESENTATION OF DATA</b>             |  |     |          |     |     |
| 11                                      | Is a legal description of the property appraised included in the report?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 25]   | [ ] | [ ]      | [ ] |     |
| 12                                      | Is a five-year subject sales history included?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 10]   | [ ] | [ ]      | [ ] |     |
| 13                                      | Does the appraiser explain why the previous sale of the subject was not used in the valuation of the subject property?   | [ ] | [ ]      | [ ] | [ ] |
| 14                                      | Is any current agreement of sale, option or listing of the property under appraisal analyzed?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 10]  | [ ] | [ ]      | [ ] | [ ] |
| 15                                      | Was a neighborhood analysis provided including a discussion of market trends, either positive or negative, which affect the subject property?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards For Board of Trustees Land", Page 25] | [ ] | [ ]      | [ ] |     |
| 16                                      | Is a land use analysis provided which discusses existing land use and zoning designations, impending use restrictions or other existing or proposed concurrency or land use planning restrictions?   | [ ] | [ ]      | [ ] |     |
| 17                                      | Does the appraisal report provide the current assessed value of the subject property?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 11]  | [ ] | [ ]      | [ ] |     |
| <b>DESCRIPTION OF SUBJECT SITE/LAND</b> |  |     |          |     |     |
| 18                                      | Is a site sketch included?   | [ ] | [ ]      | [ ] |     |
| 19                                      | Does the appraisal report describe the size, shape and other physical characteristics of the site/land?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 11]                                      | [ ] | [ ]      | [ ] |     |

**Bureau of Appraisal □ Appraisal Checklist**

**Page 3**

|    |  | Yes | Page No. | No  | N/A |
|----|--|-----|----------|-----|-----|
| 20 | Does the appraisal report describe the current state of access to the property?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 11]  | [ ] | [ ]      | [ ] |     |
| 21 | If the access is poor, inadequate or substandard, does the appraisal address its affect, with supporting market evidence, on market value?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 11] | [ ] | [ ]      | [ ] | [ ] |
| 22 | Does the appraisal describe the topography of the property?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 11]  | [ ] | [ ]      | [ ] |     |
| 23 | Does the appraisal report describe the location of the property?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 11]   | [ ] | [ ]      |     |     |
| 24 | Does the appraisal report describe the property's road frontage?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 11]   | [ ] | [ ]      |     |     |
| 25 | Does the appraisal report describe the property's water frontage?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 11]  | [ ] | [ ]      |     |     |
| 26 | Does the appraisal report describe utilities available and their proximity to the property?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 11]  | [ ] | [ ]      |     |     |
| 27 | Does the appraisal report describe nuisances and hazards, if any, affecting the market value of the property?  | [ ] | [ ]      | [ ] |     |
| 28 | Does the appraisal report describe any existing and/or potential environmental hazards affecting the market value of the property?   | [ ] | [ ]      | [ ] |     |

## Bureau of Appraisal - Appraisal Checklist

### Page 4

|    |   | Yes | Page No. | No  | N/A |
|----|---|-----|----------|-----|-----|
| 29 | Does the appraisal report describe the drainage and the existence of flood plain conditions affecting the market value of the property?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Pages 10 and 11] | [ ] | [ ]      |     |     |
| 30 | Does the appraisal report discuss any easements, encroachments and rights-of-way affecting the market value of the property?  | [ ] | [ ]      | [ ] | [ ] |
| 31 | Does the appraisal report address their affect(s), if any, on the market value of the subject property?   | [ ] | [ ]      | [ ] | [ ] |
| 32 | Does the appraisal report discuss the affect on the market value of the property as a result of outstanding oil, gas and mineral interests?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 11]     | [ ] | [ ]      | [ ] | [ ] |

## ANALYSIS OF DATA AND CONCLUSIONS

### Highest and Best Use

|    |   |     |     |  |  |
|----|---|-----|-----|--|--|
| 33 | Is the highest and best use of the property "as vacant" and "as improved", if applicable, analyzed?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 11] | [ ] | [ ] |  |  |
| 34 | Is the highest and best use based on an "economic use" of the property?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Pages 11 and 12]                     | [ ] | [ ] |  |  |

### Land Valuation

|    |  |     |     |  |  |
|----|--|-----|-----|--|--|
| 34 | Are the comparable sales verified, documented and presented?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Pages 13 and 14] | [ ] | [ ] |  |  |
| 35 | Are photographs of the comparable sales included?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 14]                    | [ ] | [ ] |  |  |

**Bureau of Appraisal - Appraisal Checklist**  
**Page 5**

|    |  | Yes | Page No. | No  | N/A |
|----|--|-----|----------|-----|-----|
| 36 | Does the appraisal report include sketches of the comparable sales?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 14]  | [ ] | [ ]      |     |     |
| 37 | Did the appraiser include a general sales location map that also shows the subject's proximity?  | [ ] | [ ]      | [ ] |     |
| 38 | Is the unit of comparison appropriate for the subject's market?  | [ ] | [ ]      |     |     |
| 39 | Is the unit of comparison reliable for the subject's market?   | [ ] | [ ]      |     |     |
| 40 | Is the unit of comparison valid for the subject's market?  | [ ] | [ ]      |     |     |
| 41 | Are the comparable sales similar to the subject in highest and best use?   | [ ] | [ ]      |     | [ ] |
| 42 | If the comparable sales are not similar in highest and best use, is an adequate discussion included as to why the sales are used?  | [ ] | [ ]      |     | [ ] |
| 43 | Are the comparable sales adjusted for cash equivalency or otherwise clearly explained?   | [ ] | [ ]      |     |     |
| 44 | If you included comparable sales to governmental units and/or non-profit groups, were they analyzed separately with appropriate comments explaining Differences, if any, compared to private transactions?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 13] | [ ] | [ ]      |     | [ ] |
| 45 | If the appraisal report includes extraordinary assumptions, are their impacts on value Adequately supported and reported in the reconciliation and final value estimate?   | [ ] | [ ]      | [ ] | [ ] |
| 46 | If you provide a discounted cash flow model in valuing the subject property, did you also provide a sales comparison, or other, approach to arrive at the present value of the subject property?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 15]           | [ ] | [ ]      | [ ] | [ ] |

**Bureau of Appraisal - Appraisal Checklist**  
**Page 6**

|    |   | <b>Yes</b> | <b>Page No.</b> | <b>No</b> | <b>N/A</b> |
|----|---|------------|-----------------|-----------|------------|
| 47 | Are demolition costs, if any, considered appropriately for the comparable sales and the subject property? | [ ]        | [ ]             | [ ]       | [ ]        |

**IF THE SUBJECT DOES NOT INCLUDE VALUATION OF IMPROVEMENTS,**

**PROCEED TO PART THREE – NUMBER 93**

**BUREAU OF APPRAISAL - APPRAISAL CHECKLIST**  
**PART TWO**

**GENERAL - IMPROVED PROPERTIES**

**Cost Approach**

|    |   | <b>Yes</b> | <b>Page No.</b> | <b>No</b> | <b>N/A</b> |
|----|---|------------|-----------------|-----------|------------|
| 48 | Are there at least two photographs or color copies of each major improvement?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 14] | [ ]        | [ ]             | [ ]       | [ ]        |
| 49 | Is a sketch of the building or a copy of the building plans included?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 14]         | [ ]        | [ ]             | [ ]       | [ ]        |
| 50 | Does the appraisal report identify and describe any potential environmental hazards (e.g., asbestos; see questions 27 and 28)?  | [ ]        | [ ]             | [ ]       | [ ]        |
| 51 | Is the source of the reproduction or replacement cost new of the improvements identified and explained?   | [ ]        | [ ]             | [ ]       | [ ]        |
| 52 | Was entrepreneurial profit, whether included or excluded, identified and supported?   | [ ]        | [ ]             | [ ]       | [ ]        |
| 53 | Is curable physical deterioration (deferred maintenance) considered?  | [ ]        | [ ]             | [ ]       | [ ]        |
| 54 | Is curable physical deterioration (deferred maintenance) adequately supported?  | [ ]        | [ ]             | [ ]       | [ ]        |
| 55 | Is incurable physical deterioration considered?   |            |                 |           |            |
| 56 | Is incurable physical deterioration supported?  | [ ]        | [ ]             | [ ]       | [ ]        |
| 57 | Is functional obsolescence considered?  | [ ]        | [ ]             | [ ]       | [ ]        |
| 58 | Is functional obsolescence supported?   | [ ]        | [ ]             | [ ]       | [ ]        |
| 59 | Is external obsolescence considered?  | [ ]        | [ ]             | [ ]       | [ ]        |
| 60 | Is external obsolescence supported?   | [ ]        | [ ]             | [ ]       | [ ]        |
| 61 | Is the contributory value of the site improvements supported?   | [ ]        | [ ]             | [ ]       | [ ]        |

**Bureau of Appraisal - Appraisal Checklist**  
**Page 8**

|                        |   | Yes | Page No. | No  | N/A |
|------------------------|---|-----|----------|-----|-----|
| <b>Income Approach</b> |   |     |          |     |     |
| 62                     | Are the comparable rentals adequately documented?   | [ ] | [ ]      | [ ] | [ ] |
| 63                     | Are the comparable rentals adequately presented?  | [ ] | [ ]      | [ ] | [ ] |
| 64                     | Did you include a general comparable rental location map also showing the location of the subject property?         | [ ] | [ ]      | [ ] | [ ] |
| 65                     | Are adjustments to the comparable rentals supported?  | [ ] | [ ]      | [ ] | [ ] |
| 66                     | Is a current rent roll and recent income history for the property provided in the report or lack thereof explained? | [ ] | [ ]      | [ ] | [ ] |
| 67                     | Were all existing leases reviewed?  | [ ] | [ ]      | [ ] | [ ] |
| 68                     | Were all existing leases described?   | [ ] | [ ]      | [ ] | [ ] |
| 69                     | Were all existing leases analyzed?  | [ ] | [ ]      | [ ] | [ ] |
| 70                     | Does the report indicate whether the contract rental income is at or near market rental rates?                      | [ ] | [ ]      | [ ] | [ ] |
| 71                     | Is the projected potential income adequately supported?   | [ ] | [ ]      | [ ] | [ ] |
| 72                     | Is your estimate of vacancy and collection loss adequately supported?   | [ ] | [ ]      | [ ] | [ ] |
| 73                     | Is a recent expense history for the subject property provided in the report?  | [ ] | [ ]      | [ ] | [ ] |
| 74                     | Are the projected expenses explained and supported?   | [ ] | [ ]      | [ ] | [ ] |
| 75                     | Are differences between the projected expenses and the property's historical expense trend supported and described? | [ ] | [ ]      | [ ] | [ ] |
| 76                     | Is each component of the selected capitalization method and technique supported by appropriate market data?         | [ ] | [ ]      | [ ] | [ ] |
| 77                     | Are the income and expense projections utilized in the discounted cash flow analysis supported?                     | [ ] | [ ]      | [ ] | [ ] |

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|    | <b>Yes</b>  | <b>Page No.</b> | <b>No</b> | <b>N/A</b> |     |
|----|---|-----------------|-----------|------------|-----|
| 78 | Are the projected vacancy and collection loss estimates and the projected absorption period, if applicable, supported?                                  | [ ]             | [ ]       | [ ]        | [ ] |
| 79 | Are deductions for rent loss, leasing commissions, tenant improvements, deferred maintenance, etc., accounted for in the discounted cash flow analysis? | [ ]             | [ ]       | [ ]        | [ ] |
| 80 | Is the discount rate supported by appropriate market data?  | [ ]             | [ ]       | [ ]        | [ ] |
| 81 | Is the terminal capitalization rate supported considering the future risk and increased age of the improvements?  | [ ]             | [ ]       | [ ]        | [ ] |
| 82 | Are reasonable sales costs deducted from the estimated reversion to arrive at the net property reversion?   | [ ]             | [ ]       | [ ]        | [ ] |

**Sales Comparison Approach**

|    |   |     |     |     |     |
|----|---|-----|-----|-----|-----|
| 83 | Is the unit of comparison appropriate for the subject's market?   | [ ] | [ ] | [ ] | [ ] |
| 84 | Is the unit of comparison reliable for the subject's market?  | [ ] | [ ] | [ ] | [ ] |
| 85 | Is the unit of comparison valid for the subject's market?   | [ ] | [ ] | [ ] | [ ] |
| 86 | Are the comparable sales adequately documented and presented?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Pages 13, 14 and 15] | [ ] | [ ] | [ ] | [ ] |
| 87 | Are photographs of the comparable sales included?<br>[Bureau of Appraisal, "Supplemental Appraisal Standards for Board of Trustees Land ", Page 14]                         | [ ] | [ ] | [ ] | [ ] |
| 88 | Does the report include a general sales location map showing the proximity to the subject property?   | [ ] | [ ] | [ ] | [ ] |
| 89 | Are the comparable sales similar to the subject in highest and best use?  | [ ] | [ ] | [ ] | [ ] |
| 90 | If the comparable sales are not similar in highest and best use, is a discussion included as to why the sales are used?   | [ ] | [ ] | [ ] | [ ] |

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**Page 10**

|    |  | <b>Yes</b> | <b>Page No.</b> | <b>No</b> | <b>N/A</b> |
|----|--|------------|-----------------|-----------|------------|
| 91 | Are the comparable sales adjusted for cash equivalency or otherwise clearly explained? | [ ]        | [ ]             | [ ]       | [ ]        |
| 92 | Are the adjustments that were applied to the comparable sales adequately supported?    | [ ]        | [ ]             | [ ]       | [ ]        |

**BUREAU OF APPRAISAL - APPRAISAL CHECKLIST**  
**PART THREE**

**Reconciliation**

|    |  | Yes | Page No. | No  | N/A |
|----|--|-----|----------|-----|-----|
| 93 | Did you consider and reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used?   | [ ] | [ ]      | [ ] | [ ] |
| 94 | Is the final value estimate consistent with the data and analyses presented in the report?   | [ ] | [ ]      |     |     |
| 95 | Does the appraisal report consider and analyze the effect on value, if any, of the assemblage of the various estates or component parts of a property, refraining from estimating the value of the whole property simply by adding together the individual values of the various estates or component parts without explanation? | [ ] | [ ]      | [ ] | [ ] |
| 96 | In arriving at a final value estimate, does the appraisal consider the value impact (cost to cure/stigma) of environmental hazards and/or other contamination (underground storage tanks, toxic waste disposal, etc.) before concluding the "as is" value?   |     |          |     |     |
| 97 | Is the highest and best use conclusion(s) consistent with the value reported?  | [ ] | [ ]      | [ ] |     |

**Miscellaneous**

|     |   |     |     |     |     |
|-----|---|-----|-----|-----|-----|
| 98  | Does the report provide an estimate of the property's anticipated exposure time, as required by USPAP?  | [ ] | [ ] | [ ] |     |
| 99  | Does the appraisal explain and support the exclusion of any of the usual valuation approaches?  | [ ] | [ ] | [ ] | [ ] |
| 100 | Does the report contain a clear and adequate disclosure of all ordinary and extraordinary assumptions (see question 45) or limiting and hypothetical conditions that directly affect the appraisal? | [ ] | [ ] | [ ] | [ ] |
| 101 | Are Extraordinary Assumptions and Hypothetical Conditions approved by the Bureau of Appraisal?  | [ ] | [ ] | [ ] | [ ] |
| 102 | Are Extraordinary Assumptions and Hypothetical Conditions repeated with all statements of the final opinion of value?   | [ ] | [ ] | [ ] | [ ] |

**SIGNED:** \_\_\_\_\_.

**DATE:** \_\_\_\_\_.

**EXHIBIT I - INTERAGENCY LAND ACQUISITION CONFERENCE -**  
**POSITION PAPER On a non-economic highest and best use**

**On the issue whether a non-economic highest and best use can be a proper basis for the estimate of market value.**

**INTRODUCTION**

The Interagency Land Acquisition Conference is an organization composed of representatives of federal agencies engaged in the acquisition of real estate for public uses. The Conference was established on November 27, 1968, by invitations issued by the Attorney General. The Conference chairperson is the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, and the Conference Executive is the Chief of the Land Acquisition Section of the Environment and Natural Resources Division, Department of Justice.

The Conference conducts its business by *ad hoc* committee called into session as land acquisition issues arise that affect the federal land acquiring agencies. For example, when the Freedom of Information Act (FOIA) was enacted, the Conference was called into session and developed a position paper regarding the release of government appraisal reports under FOIA. The Conference was also responsible for the development of the *Uniform Appraisal Standards for Federal Land Acquisitions* published in 1972, as well as the 1973 and 1992 revisions thereof, which establish guidelines for appraisals prepared for the purpose of federal land acquisition. When the subject under Conference consideration is valuation, as here, the agencies are generally represented on the Conference by their Chief Appraisers.

The member agencies of the Conference whose representatives participated in this project are:

U.S. Department of Justice  
U.S. Army Corps of Engineers  
General Services Administration, FPRS  
General Services Administration, PBS  
Housing and Urban Development, MF  
Housing and Urban Development, SF  
Bureau of Land Management  
U.S. Fish and Wildlife Service  
U.S. Forest Service  
Department of Transportation, FHWA  
National Park Service  
U.S. Navy  
Western Area Power Administration  
U.S. Postal Service  
Bureau of Indian Affairs  
Bureau of Reclamation  
Pennsylvania Avenue Development Corporation  
Bonneville Power Administration  
Federal Aviation Administration

The Conference convened in late 1994 to consider the issue that is the subject of this paper. It was decided by the Conference that a committee should be appointed to study the issue and draft a position paper for consideration by the Conference. The committee appointed consisted of the representatives of the following Conference members:

U.S. Department of Justice  
U.S. Forest Service  
U. S. Fish and Wildlife Service  
Bureau of Land Management  
Bonneville Power Administration  
U.S. Army Corps of Engineers  
Department of Transportation, FHWA  
National Park Service

The committee developed a draft position paper and submitted it to the members of the Conference. Following receipt of comments and suggestions from Conference members, a modified final version of the paper was presented to the Conference members and approved.

## THE ISSUE

Is a non-economic highest and best use a proper basis for the estimate of market value?

This question has been analyzed by the Conference with reference to the *Uniform Appraisal Standards for Federal Land Acquisitions*, (Washington, D.C.: U.S. Printing Office, 1992).

### **BACKGROUND**

Public concern over the environment the past several years has resulted in legislatively mandated land acquisitions for the sole purpose of conservation, wildlife habitat, or preservation of the lands in their natural state. Because of the nature of these acquisition programs and the goals they are intended to achieve, much of the land acquired is held in large ownership blocks, is remotely located, has suffered little human encroachment, and is of minimal economic utility or value.

Historically, the appraisal of such lands would bring about such economic highest and best use estimates as timber production, grazing, marginal recreation, or hold for speculative appreciation. Recently however, a small group of appraisers and others have advocated that the highest and best use of such lands is for the very purpose for which the government is acquiring them - such as preservation in their natural state, or other non-economic uses.

The validity of appraisals, based on non-economic highest and best uses, as legitimate estimates of market value has been the subject of numerous articles in professional journals, and has been the subject of committee research and/or forums at the national meetings of the International

Right-of-Way Association, the American Society of Farm Managers and Rural Appraisers, and the Appraisal Institute. In many of these articles and forums it has been suggested that estimates of such value are not estimates of market value, but rather estimates of value in use, value to the government or public, natural value, or public interest value.<sup>1</sup>

Value estimates and appraisal reports have been developed on this premise of "preservation" as a property's highest and best use. Legal counsel for some property owners have submitted these reports to Conference members urging that they be accepted as reliable opinions of market value. They have argued that such reports are in conformance with the *Uniform Appraisal Standards for Federal Land Acquisitions*, (Washington, D.C.: U.S. Printing Office, 1992), the *Uniform Standards of Professional Appraisal Practice*, and are in keeping with generally accepted definitions of highest and best use and market value.

Conference members, to whom such reports have been submitted, have found within them a common thread. Authors of these reports have adopted a definition of highest and best use that encompasses consideration of non-economic uses. The appraisals develop an indication of value that clearly falls outside of the traditionally accepted definition of market value.

Under established law the criterion for just compensation is the fair market value of the property at the time it is acquired.<sup>2</sup> Because the purpose of the *Uniform Appraisal Standards for Federal Land Acquisitions* is to set forth the principles applicable to the appraisal of property for Federal land acquisitions by both direct purchase and condemnation,<sup>3</sup> only estimates of market value are applicable to federal land acquisitions. Absent legislative mandate, any other type of value estimate is unacceptable for Federal land acquisition purposes.

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<sup>1</sup> The Conference finds the term "public interest value" inappropriate and misleading. After a review of several of these reports the Conference has concluded that what is being estimated is not a value, but a prediction of the price at which a transaction will be consummated between two specific parties rather than market value. The Dictionary of Real Estate Appraisal, 3d. ed. (The Appraisal Institute, 1993) defines "price" as "The amount a particular purchaser agrees to pay and a particular seller agrees to accept under the circumstances surrounding their transaction."

<sup>2</sup> *Uniform Appraisal Standards for Federal Land Acquisitions*, (Washington, D.C.: U.S. Printing Office, 1992), §A-2, p. 3, citing *United States v. 50 Acres of Land*, 469 U.S. 24, 29 (1984); *Kirby Forest Industries, Inc. v. United States*, 467 U.S. 1, 9 (1984); *United States v. Miller*, 317 U.S. 369, 373-378 (1943); *Olson v. United States*, 292 U.S. 246, 255 (1934); *United States v. Petty Motor Co.*, 327 U.S. 372, 377-378 (1946).

<sup>3</sup> *Ibid.*, p. 1.

## **HIGHEST AND BEST USE**

Fair market value is to be determined with reference to the property's "highest and best use" - that is, the highest and most profitable use for which the property is adaptable and needed or likely to be needed in the near future.<sup>4</sup>

A proposed highest and best use requires a showing of a reasonable probability that the land is both physically adaptable for such use **and** that there is a need or demand for such use in the reasonably near future; physical adaptability alone is insufficient.<sup>5</sup>

Highest and best use cannot be predicated on a demand created solely by the project for which the property is taken (*e.g.*, rock quarry, when only market is highway project for which property was taken). A proposed highest and best use cannot be the use for which the government is acquiring the property (*e.g.*, missile test range, airfield, park), unless there is a prospect and demand for that use by others than the government.<sup>6</sup>

The use to which the government will put the property after it has been taken is, as a general rule, an improper highest and best use. It is the value of the land taken which is to be estimated, not the value of the land to the taker. If it is solely the government's need which creates a market for the land, this special need must be excluded from consideration by the appraiser. Only on the rare occasion that a private demand for the land exists, for the same use for which it is being acquired by the government, is it proper for the appraiser to conclude that the highest and best use of the property is that use for which it is being acquired by the government.<sup>7</sup>

From the above it is clear that highest and best use, as used in the *Uniform Appraisal Standards for Federal Land Acquisitions*, is to be estimated in economic terms. Implied in the forgoing is that highest and best use is an economic concept, not a social concept. This position is supported by modern appraisal textbooks.

Therefore, the analysis and interpretation of highest and best use is an *economic* study of market forces focused on the subject property.<sup>8</sup> The benefit a real estate development [or non-development in the case of preservation] produces for a community or the amenity contribution provided by a planned project (*i.e.*, the public space in a park-like area) are not considered in the appraiser's analysis of highest and best use.<sup>9</sup>

## **CONCLUSIONS**

For the above reasons, it is the Conference's position that a non-economic highest and best use is not a proper basis for the estimate of market value and, accordingly, that a highest and best use of

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<sup>4</sup> *Ibid.*, §A-3, p. 8, citing *Olson v. United States*, 292 U.S. 246, 255 (1934).

<sup>5</sup> *Ibid.*, p.9, citing *Olson, supra*, 292 U.S. at 256; *United States v. 341.45 Acres of Land*, 633 F.2d 108, 111 (8th Cir. 1980), cert. denied, 451 U.S. 938 (1981).

<sup>6</sup> *Ibid.*, pp. 9-10 (citations omitted).

<sup>7</sup> *Ibid.*, §B-1 14, pp. 73-74.

<sup>8</sup> *The Appraisal of Real Estate*, 10th ed., (Chicago: Appraisal Institute, 1992), 276-277 (emphasis added).

<sup>9</sup> *Ibid.*, 276, fn. 1.

conservation, preservation, or other use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value. Such an estimate is, therefore, not in conformance with the *Uniform Appraisal Standards for Federal Land Acquisitions*.

**ADOPTED** this 14th day of April, 1995.

**Interagency Land Acquisition Conference**

**By: /s/**

**Lois J. Schiffer, Conference Chairperson**

**By: /s/**

**William J. Kollins, Conference Executive**