

Statement of
Chad Calvert
Deputy Assistant Secretary for
Land and Minerals Management
U.S. Department of the Interior
House Resources Committee
Subcommittee on Forests and Forest Health
H.R. 3462, Park City, Utah Land Conveyance
September 27, 2005

Thank you for the opportunity to testify on H.R. 3462 which would convey four parcels of BLM-managed public lands totaling approximately 115 acres to Park City, Utah. As a matter of policy, we support working with states and local governments to resolve land tenure and land transfer issues that advance worthwhile public policy objectives, and we have no objection to the transfer of these specific lands out of Federal ownership. However, the Administration believes Congress needs to be aware of the value of these lands. We have significant concerns about provisions in the bill that would potentially undervalue the land being transferred and therefore undercompensate federal taxpayers for the transfer of these lands. As discussed more fully below, we also have concerns about how the bill treats the disposition of receipts. Further, we recommend changes to the legislation to ensure that only mining claims with successfully completed validity exams would be purchased.

Background

Originally founded as a silver mining town in the 1860s, the last of Park City's mines closed in the early 1970s. Today Park City is recognized as one of the premier ski destinations in the country. Many of the events for the 2002 Winter Olympics were held in Park City which is home to three elite resorts: Park City Mountain Resort, Deer Valley Resort and the Canyons Resort. Growth in Park City and Summit County has been monumental over the last few decades and housing and land prices are among the highest in Utah.

The BLM manages four parcels of federal land within Park City, in the Deer Valley area. They range in size from a half acre to just over 91 acres. These parcels are interspersed with high end housing and have encumbrances on them including old unpatented mining claims, rights-of-way, and old mining houses in trespass. Additionally, the BLM has a Recreation & Public Purposes (R&PP) lease with the city on the largest of the parcels which was first issued to the city in 1985 for the purpose of the planned development of recreational facilities. That lease is currently a source of contention between the BLM and Park City because the City's R&PP development plans have not been completed and there is no legal public access to the parcel. It is now our understanding that the city has reconsidered its plans and has indicated that they wish to maintain the land for open space, not public recreation. Open space that does not provide any additional public value, such as recreational facilities, is not an allowed use under the R&PP Act.

H.R. 3462

H.R. 3462 proposes to convey to Park City, Utah all right, title and interest of the United States to the four parcels of land in the Deer Valley area as follows:

Parcel 8 (White Acre) 20.96 acres

Parcel 16 (Gambel Oak) 91.31 acres

Parcel 17 0.5 acres

Parcel 18 3.09 acres

While we have not undertaken an appraisal of these lands, comparables in the immediate area suggest that a valuation of at least \$1 million an acre is not unreasonable, meaning that the total fair market value of the land being transferred could well exceed \$100 million. However, H.R. 3462 requires that the land be maintained as open space and appraised strictly as open space which would likely result in values at a fraction of their value if appraised at their highest and best use.

The legislation requires Park City to pay the Secretary of the Interior fair market value, except that the appraisal shall be "based on the continued and primary use of the property as open space." The city is required to use the property for open space and public recreation purposes, including the construction of facilities, utilities, and other structures on the lands. Further, the legislation requires the Secretary of the Interior to convey the lands free of any mining claims or related encumbrances. This condition can be satisfied under the legislation if the city transfers a portion of the property it receives to the mining claimants in compensation for relinquishment of those claims.

The Department of the Interior has some major concerns with H.R. 3462, as drafted. The Department is committed to conducting appraisals of land and interest in land with the highest level of integrity and in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice. In 2003, the appraisal functions of individual bureaus and agencies within the Department of the Interior were transferred to a Department-wide Appraisal Services Directorate within the National Business Center. In December of last year, the

Secretary issued guidance to all of the bureaus on legislative exchanges and land valuation issues. A copy of that guidance (Secretary of the Interior Order No. 3258) is being provided for the record.

The Departmental guidance recognizes there are times where an alternative method of valuation (AMV) is appropriate and may be directed by Congress or proposed by the Department. What the guidance clarifies is that when an AMV is used, as in a case like this where Congress is directing that the property be valued for its open space value, a valuation be conducted, not an appraisal. Under the Department's guidance, when Congress directs the Department to use an AMV other than or in addition to an appraisal, the Department will do so, expressly describing the AMV applied, how the AMV differs from standard appraisal methods, and, if Congress directs, the Department will provide this information to the appropriate committees prior to or after the completion of the transaction, in accordance with Congress's direction.

Second, we are concerned about the continuing involvement of the Federal government in the allowed uses of the property as described in the legislation. We do not want to be drawn into local planning decisions on lands that are no longer a part of the Federal estate. We therefore suggest that, if the land is to be conveyed with an open space restriction, that restriction be included in the deed, and made enforceable by any person. Then, local citizens, not the Federal government, can ensure that the land remains in open space status. This will also resolve the concern we have with mixing an appraisal with an AMV.

As I noted initially, there are a number of encumbrances on the parcels identified for transfer to Park City. Parcel 16 has 10 unpatented mining claims and parcel 18 has a portion of one mining claim. Parcel 18 also contains several old mining houses the status of which remains unresolved. Two of these houses are currently occupied in trespass. Additionally, there are 11 rights-of-way on parcels 16 and 18 for uses such as roads, power lines, telephone lines and sewer lines.

In the case of the unpatented mining claims, the legislation requires the Secretary to transfer the lands without these encumbrances, but would allow the city to compensate the mining claimants through transfer of some portion of the Federal lands conveyed to the city. First, if the city is paying for land valued as open space land, that land should retain its open space status and not be allowed for other uses by mining claimants. The city should be required to pay fair market value, based on the land's highest and best use, for any land that is conveyed to private parties. We oppose this provision of the bill, as written, because it is inappropriate to make payment for claims without a demonstration of validity under the mining laws. As a result of an agreement relating to the R&PP lease with the city, the BLM agreed not to contest the mining claims or complete validity exams while the lease was in place. Validity exams should be completed on the claims prior to any payment of land to these claimants because the economic value of the claims has not been established.

Finally, as discussed earlier, we are concerned about the precedent this bill could set for the disposition of receipts by circumventing BLM's normal budget process which takes into account the resource needs of BLM offices in each state. We suggest that any receipts from this land transfer either be directed to the Federal Treasury or be deposited in the land sale account already established under the Federal Land Transaction Facilitation Act (FLTFA), where the proceeds could be directed to priority acquisitions of inholdings within the State of Utah.

Conclusion

The Department of the Interior is mindful that legislated land transfers often promote varied public interest considerations; part of our role is to help inform Congress and the public about the tradeoffs associated with such transfers. The Administration will supply complete and accurate information about valuation and our ability to implement the provisions in a way that meets the expectations of Congress. We are prepared to work with the Subcommittee to address these issues.

THE SECRETARY OF THE INTERIOR
Washington

ORDER NO. 3258

SIGNATURE DATE: December 30, 2004

Subject: Policy Guidance Concerning Land Valuation and Legislative Exchanges

Sec. 1 Purpose. This Order provides policy for land valuation issues, real property appraisals, and legislative land exchanges.

Sec. 2 Background. During the past year, the Department has taken significant steps to ensure that land transactions are conducted with integrity and earn public confidence. These steps include implementing reforms to improve the management of real property appraisals, establishing the Appraisal Services Directorate, and issuing the Land Transaction Principles. This Order provides the following: (a) a policy on alternative methods of valuation (AMV) that addresses the need to comport with nationally applicable appraisal standards; (b) a policy on appraisals prepared for third (i.

e., non-Federal) parties; and (c) a policy on legislative exchanges that reinforces existing Departmental guidance and further provides for a Departmental determination on how to review such proposals internally to ensure appropriate coordination and decision making. The legislative exchange policy also underscores the importance of adhering to applicable appraisal standards in developing applicable legislative provisions.

Sec. 3 Authority. The policy in this Order is being issued in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

Sec. 4 Policy.

a. Alternative Methods of Valuation.

(1) All real property appraisals performed by the Department shall conform to nationally recognized appraisal standards (i.e., the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). Accordingly, the use of public interest value, contingent valuation, habitat equivalency analysis, and any other AMV in appraisals is expressly prohibited.

(2) If Congress directs the Department to utilize AMV other than or in addition to an appraisal in a specific transaction, the Department shall (a) expressly describe the AMV applied; (b) using the assistance of the Appraisal Services Directorate (ASD), explain how the AMV differ from appraisal methods applied under UASFLA or USPAP; and (c) upon Congressional direction, provide this material to the appropriate committees prior to or after completion of the transaction, in accordance with such direction.

(3) Requirement for Congressional Authorization or Notification.

(a) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that requires Congressional authorization, the Department shall expressly describe to the appropriate committees of Congress the AMV applied and, using the assistance of the ASD, explain how they differ from appraisal methods applied under UASFLA or USPAP.

(b) If the Department proposes to utilize AMV other than or in addition to an appraisal in a specific transaction that does not require Congressional authorization, the Department shall notify the appropriate committees of Congress and the Office of the Inspector General prior to the completion of the transaction and, upon Congressional direction, explain, using the assistance of the ASD, to the appropriate committees how the AMV differ from appraisal methods applied under UASFLA or USPAP.

(4) The Associate Director, ASD, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Office of the Special Trustee for American Indians (OST), as applicable, and the Office of Congressional and Legislative Affairs (OCL).

b. Appraisals Prepared for Third (i.e., non-Federal) Parties.

(1) Appraisals prepared for third (i.e., non-Federal) parties may assist in achieving mutually beneficial outcomes for the Department and the proponent. The Department of the Interior, however, is not obligated to review land transaction proposals supported by such appraisals that do not comport with its land management missions, priorities, and plans.

(2) Upon bureau request, the Department, acting through the ASD or the OST, as applicable, shall review a third party appraisal if: (a) the third party consults with ASD or OST prior to the initiation of the appraisal on the scope of work and the selection of the appraiser, and agree that ASD or OST, as applicable, is both the client for and an intended user of the appraisal; (b) a senior bureau or Departmental manager (i.e., Senior Executive Service level in the field or headquarters, as applicable) has transmitted the appraisal with a determination that the land transaction proposal supported by the appraisal comports with applicable missions, priorities, and plans; and (c) ASD or OST, as applicable, has determined that the appraisal was prepared by a certified appraiser and meets applicable appraisal standards.

(3) ASD or OST review of an appraisal does not create an expectation that such appraisal will be approved.

(4) In cases where an appraisal is reviewed by ASD or OST, a second appraisal may be required. If so, ASD or OST shall conduct or oversee that appraisal, which shall be performed in accordance with procedures determined by ASD or OST, as applicable.

(5) The Associate Director, ASD, has overall authority and responsibility to ensure the implementation of this policy in coordination with OST, as applicable, and the OCL.

c. Legislative Exchanges.

(1) All officials and employees of the Department shall adhere to 461 DM 1, which addresses requests for information, drafting, or other assistance regarding legislation from sources outside the Department, and specifically requires coordination with the Legislative Counsel in OCL.

(2) Similar coordination with the OCL shall occur on legislative exchange proposals initiated by any entity, official, or employee of the Department.

(3) The OCL shall determine the appropriate means for the review of each legislative exchange proposal, including the involvement of appropriate policy officials of other offices (e.g., the ASD or the OST as appropriate, and the Solicitor).

(4) Appropriate documentation shall support the key provisions of all legislative exchange proposals.

(5) All appraisals used in legislative exchanges shall conform to nationally recognized appraisal standards (i.e., the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable). When the Department proposes the application of alternative methods of valuation other than or in addition to an appraisal for a legislative exchange, it shall expressly describe the alternative methods of valuation and explain how they differ from methods utilized in an appraisal consistent with nationally recognized appraisal standards (i.e., the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice, as applicable).

(6) The Director, OCL, has overall authority and responsibility to ensure the effective implementation of this policy, in coordination with the Associate Director, ASD, as applicable.

Sec. 5 Expiration Date. This Order is effective immediately. It will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded, or revoked, whichever occurs first. In the absence of any of the foregoing actions, the provisions of this Order will terminate and be considered obsolete on July 30, 2006.

/s/ Gale A. Norton
Secretary of the Interior