



A Successful Approach to Voluntary Land Acquisitions

By David Cavanaugh

The Bureau of Land Management (BLM) appraisal and acquisition procedures place great reliance on the appraiser's opinion of value. Long-standing guidance in the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) recommends that the price paid by the agency should be based on an approved appraisal report. The prevailing thought is that the appraiser establishes fair market value and by inference, just compensation.



Although the Yellow Book is primarily intended to provide guidance for condemnation appraisal reports, it has been applied to both voluntary and involuntary transactions. Since most agencies are reluctant to use condemnation, that guidance as it applies to voluntary transactions is less relevant.

This article discusses an approach that federal agencies can use that will enhance the development of trust between the property owner and the acquiring agency. It is based on an assumption that the current approach is outmoded and that the property owners should have an opportunity to be more involved in the appraisal and acquisition.

The primary goal is to improve information gathering in the appraisal process, avoid unreasonable disagreements in the appraised value and enhance public support for agency decisions. Disagreements regarding the application of an appraisal technique, facts, assumptions and conclusions should be resolved as part of the appraisal review process. Such an approach is consistent with generally accepted appraisal standards requiring the use of all relevant information to produce a credible estimate of market value.

Current Practice

Federal agency acquisitions of land are either voluntary or involuntary. Voluntary acquisitions do not involve the

threat of condemnation. The distinction is important, not only for theoretical reasons, but also because the threat of condemnation changes the dynamics of the negotiation process.

Federal natural resource agencies normally are unwilling to use condemnation authority. Condemnation is expensive, incites local property owners and raises a concern as to its appropriate use by federal agencies. It is an adversarial process. In such circumstances, agencies have a dual responsibility that is in conflict. The agency is obligated to provide fair treatment of the property owner and at the same time structure a case protecting the government's interest in the event it is necessary to "take" the property by condemnation.

Most BLM land acquisitions are from willing seller transactions. The BLM acquires property for purposes of protecting natural and cultural resources, endangered species, consolidating ownership for more efficient management and blocking-up open space to enhance public recreational opportunities. Acquisitions are accomplished directly with the use of Land and Water Conservation Funds (LWCF) or through land exchanges. BLM's purchase of properties through the LWCF program is small compared to other resources agencies. However, most BLM land acquisitions are accomplished by land exchanges. In either case, such acquisitions are voluntary transactions. —————>

Land exchanges involve a wide variety of resource, tenure and management issues. As a result, land exchanges take a long time to complete. BLM must address issues and handle conflicts that arise through the public disclosure process. At the time BLM makes the decision to proceed with a land exchange, the supporting information including the environmental assessment and appraisal reports are available to the public for review. Once the decision is announced, information supporting BLM's decision, including the appraisal and review report(s) must be made available to the public. The public has 45 days to comment, appeal or protest the decision. As a result, BLM land exchanges receive considerable public scrutiny. That approach reduces the potential for completing transactions that are not in the public interest.

There are many examples where the BLM and the property owner work together to pursue mutually exclusive interests, whether by direct purchase or land exchange. To be successful both parties must be motivated, develop a dependable working relationship, trust each other and share a sense of accountability to the public. Although those elements do not always occur in equal proportions, they can provide a basis for reaching an agreement on value.

Condemnation Acquisition Process

Condemnation is the use of government authority to "take" property upon payment of just compensation. Just compensation involves the payment for the property "taken." The courts in an effort to set just compensation have adopted the concept of market value in determining the value of the property taken. Appraisal reports estimating market value are presented as evidence by expert witnesses in court and the judge decides the amount of just compensation.

Agencies contemplating use of condemnation, select, hire, pay and



The BLM has utilized an appraisal and acquisition process in Washington County, Utah that attempts to overcome basic distrust of the acquiring agency.

In Washington County BLM is responsible for acquiring lands within a Habitat Conservation Plan (HCP) area for the protection of the Mojave Desert Tortoise and other threatened species.

review the appraisal report. One or more appraisal reports may be obtained. The appraisal reports are prepared with the knowledge they may be subject to litigation. A qualified reviewer reviews them and the amount of the approved appraisal is the basis for the agency's offer. The offer represents what the agency believes, insofar as it is possible, what the property would likely sell for in the market. Reliance on the agency's appraisal and review determination without some explanation or discussion with the property owner can result in a "take it or leave it" attitude.

That occurrence is often referred to as the "one price offer." The offer is made in writing and the property owner is assured that the offer is based on an appraisal report that has been reviewed and complies with agency standards. The property owner

has little or no opportunity to comment on the appraisal report once it has been approved by the agency. If the property owner disagrees with the offer, he or she faces the prospect of condemnation proceedings.

The owner may reluctantly accept the offer, ask the agency to reconsider their offer, pay for a second appraisal report, or threaten to withdraw from negotiations and wait for the agency to initiate condemnation proceedings. Although attempts are made to reach an amicable settlement, the negotiation process can break down. The threat of condemnation often permeates the negotiation process.

The condemnation approach is not applicable to voluntary acquisitions of property. In most voluntary transactions the property owner is unfamiliar with the agency acquisition process and expects to have

some involvement or say in the value of his/her property. The property owner is often knowledgeable, protective of their own interest and somewhat distrustful of the agency. Given the subjective nature of appraisal techniques, property owners are reluctant to defer all value-related decisions solely to the agency appraiser or reviewer.

An Alternative Approach

The BLM has utilized an appraisal and acquisition process in Washington County, Utah that attempts to overcome basic distrust of the acquiring agency. In Washington County BLM is responsible for acquiring lands within a Habitat Conservation Plan (HCP) area for the protection of the Mojave Desert Tortoise and other threatened species.

Initially there were delays in the appraisal and acquisition process. This was due to the controversy regarding the HCP and whether or not the lands would be appraised based on the presence of the endangered species. Affected property owners adamantly opposed any decrease in value resulting from decisions placing their lands within the HCP.

The issue was resolved by language in an appropriation bill that directed the agency to appraise and offer to acquire lands without regard to the presence of a species listed as threatened or endangered pursuant to the Endangered Species Act of 1973. Appraisals were to assume that private lands within the HCP could have been developed to their highest and best use had it not been for the presence of the desert tortoise.

However, property owners remained concerned that they would not be treated fair and equitably in the appraisal process. To establish trust, efforts were made to meet with property owners, reach agreement on the selection of appraisers, when work would be completed and how the appraisal review process would be

conducted. As part of the appraisal review process property owners were given an opportunity to ask questions of the appraisers and present additional information.

Those meetings would involve BLM managers and be conducted prior to the reviewer finalizing a review of the appraisal report. During that stage efforts are made to resolve identified appraisal issues. When the appraisal issues are resolved to the satisfaction of the reviewer and hopefully the property owner, a review report is submitted to state director. The review report addresses issues raised by the property owner and BLM managers and includes a market value recommendation for the proposed real estate transaction.

Overall, the process used in Washington County, Utah has worked very well. The property owners ask good questions and often provided additional information for consideration by the appraisers. The information may deal with comparable sales, water rights, soils, drainage problems, access, zoning and funded extensions of sewer and water. The process helps improve the quality of the final appraisal product and enhance acceptance by the property owner. The additional information is typical of information that should be part of any acceptable report meeting professional and agency standards.

The process did not always result in an alteration of the original appraisal reports. However, in many cases the appraiser was asked to prepare an addendum to the appraisal report. The addendum would clarify an appraisal method or technique, an assumption or consider additional information provided by the property owner. That process was valuable when the property appraised was unique or there was limited market information available for consideration by the appraiser. If the appraisal report was inadequate, either BLM or the property owner would obtain an additional appraisal.

Reaching agreement on value is the most critical part of the acquisition process. In Washington County, it was important that both the agency and the property owner have confidence in the appraiser or in a process that will result in a fair and reasonable value. The appraiser serves as an expert, providing valuable appraisal information in the report, responding to property owner inquiries and acting as an advisor in facilitating a reasonable and fair settlement. In the event agreement cannot be reached on value, other dispute resolution processes can be used by agency management to facilitate and allow the parties to reach a reasonable settlement. It is important that all substantive appraisal issues be addressed before utilizing a dispute resolution process. In Washington County the appraisal reports have been the basis for all of the transactions.

There is no one best way to handle agency acquisition of property. However, to cultivate trust and improve credibility, agencies should use a more open process with the property owners. Important actions include involving the property owner in the acquisition planning process, selecting the appraisers, pre-appraisal meetings, setting due dates, sharing appraisal reports, meeting with the appraisers, seeking solutions to difficult and complex valuation issues and finding appropriate, reasonable methods for resolving value disputes.

These steps will reduce potential for suspicion that the agency is directing the process and imposing a settlement on the owner.

An acceptable appraisal is the centerpiece of successful negotiations. It is important that the report be prepared by an appraiser that both parties respect and trust. The report must meet appraisal documentation standards, but also be presented in an objective, honest and an authoritative manner. The appraisal is only one part of a series of steps that reinforce

the trust relationship. The ultimate goal is that a professionally prepared appraisal report be the basis for reaching agreement with the property owner.

Advantages

There are numerous advantages to opening up the valuation process for voluntary acquisition of property. They include:

1. Facilitating the property owner's participation and input early in the process.
2. Allowing addition of other, relevant information in the final appraisal.
3. Improving the thoroughness of the appraisal reports.
4. Reducing unexpected delay associated with disagreements regarding the appraisal.
5. Allowing the agency and property owner to cooperatively decide how to proceed when the appraisal is considered.
6. Enhancing the development of trust throughout the appraisal and acquisition process.
7. Improving the credibility of the reviewer by being sure all relevant information is considered before making a value recommendation.
8. Increasing efficiency by completing reviews only after all appraisal issues raised by the property owner are adequately resolved.
9. Enhancing teamwork among professionals involved in the acquisition process.
10. Providing a mechanism to value property when the property appraised is unique or there is very little relevant market information that can be used by the appraiser.

The process requires a different set of skills, but should result in property owners feeling they are equals in the acquisition process. Landowners must feel they are part of the process and be confident that the appraised values have been reached in a reasonable and fair manner. Successful acquisition will require greater flexibility in meeting not only the agency's



The issue was resolved by language in an appropriation bill that directed the agency to appraise and offer to acquire lands without regard to the presence of a species listed as threatened or endangered pursuant to the Endangered Species Act of 1973.

requirements, but also addressing the concerns of the property owner.

Disadvantages

There are substantial risks to opening up the valuation process for voluntary acquisition. Most agencies are comfortable with the existing process and are reluctant to consider

a more open process. Managers are more comfortable basing their decisions on reviewed and "technically approved" appraisal reports. Negotiations or "bargaining" places the manager or negotiator in a difficult position and requires that they deal with resolving potential disputes.

The negotiation process involving the property owner shifts the control point from the review appraiser to the manager. As a result there is a risk that agency staffs and managers may abuse the process by paying too much for property, or in the case of land exchanges, not getting enough for federal lands. Agency staffs may feel even more pressure and not be able to constructively handle comments and criticism regarding the appraisal report(s).

Others may feel that the appraisal review process has been compromised and that it has been merged into the negotiation process. Without adequate management controls, the wall preventing waste, fraud and abuse will have been weakened.

In addition, the current agency-driven process safeguards the appraiser and others involved in the transaction. The condemnation acquisition process could potentially be undermined by allowing input from the property owner prior to completing the review report. It is argued that agencies should be consistent in their approach when acquiring property and that the current agency-driven process is sufficient. It is not necessary to have one approach for acquisitions involving condemnation and another for voluntary transactions.

Conclusion

The appraisal and information gathered during the appraisal process should be the basis for reaching agreement on value. The appraiser is the most qualified person to provide market information and assist in the negotiation process.


In most cases, land is acquired successfully through negotiations. An

acquisition model based on the threat of condemnation is no longer relevant when dealing with willing buyers. In such cases, the agency should focus on fostering trust, respect and openness. In the event of a dispute concerning the appraised value, a willingness to cooperatively resolve any appraisal issues.

The more open approach, such as that used in Washington County, Utah, reduces potentially coercive practices, attempts to balance the relationship between the agency and the property owner and improves the usefulness and credibility of the appraisal report. By involving the property owner, the agency increases the chances of successfully acquiring the property. More importantly, it has potential to increase public confidence in agency acquisition programs and reduce project costs and delays associated with protracted disagreement over the agency's appraised value. ■

David Cavanaugh is a Senior Specialist responsible for the appraisal policy within the Department of Interior, Bureau of Land Management. During his 30 years of government service, he has also worked for the Wisconsin Highway Department, the Federal Highway Administration and the Department of Energy. He has written other articles on federal acquisition legislation and appraisal review.

The author wishes to clarify that his opinions do not necessarily reflect the viewpoints or policies of any particular employer or any other appraisal consultant.



► WE ARE PLEASED TO ANNOUNCE
RICHARD G. RYPINKSI

FORMER
CHIEF COUNSEL TO CALTRANS
AND MAYOR OF THE CITY OF DEL MAR
HAS JOINED MH&A

RICHARD G. RYPINKSI
 FPO
 M/A 99
 Page 13

■ EMIL
 ■ INV
 ■ NEP

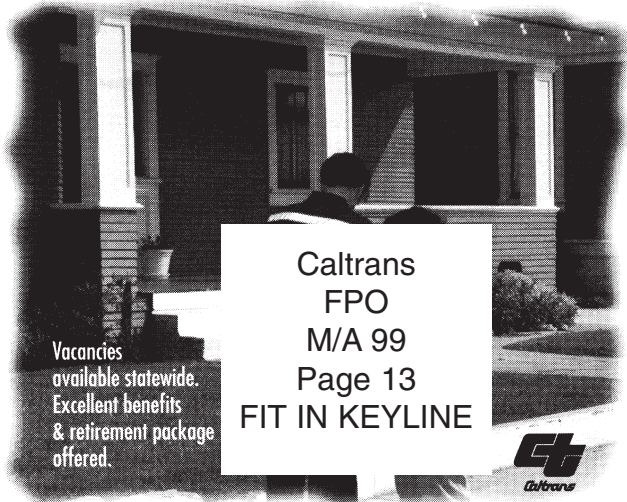
IES

**McDONOUGH
 HOLLAND
 & ALLEN**
Attorneys at Law

RICHARD RYPINKSI CAN BE REACHED AT OUR OAKLAND OFFICE.

SACRAMENTO (916) 444-3900 OAKLAND (510) 273-8780 YUBA CITY (530) 674-9761 www.mhalaw.com

Choose the Right Way to your Career.
Caltrans is hiring Right of Way Agents.



Vacancies available statewide. Excellent benefits & retirement package offered.

Caltrans
 FPO
 M/A 99
 Page 13
FIT IN KEYLINE

Minimum Qualifications:
 4-year college degree (Bachelors) OR registration as a senior in a 4-year college.
 Must pass civil service exam available on line at <http://exams.spb.ca.gov/ssaexam>.
 Visit our webpage for more info:
www.dot.ca.gov