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BY THE COMPTROLLER GENERAL
Report To The Chairman, Subcommittee On
Environment, Energy, And Natural Resources
Committee On Government Operations
House Of Representatives
OF THE UNITED STATES

The Bureau Of Land Management Should Follow Fair Market Value Requirements In Selling Land In Las Vegas, Nevada

The Santini-Burton Act of 1980 directs the sale of public land managed by the Department of the Interior's Bureau of Land Management in the Las Vegas, Nevada, area and the acquisition of environmentally sensitive land in the Lake Tahoe Basin by the Department of Agriculture's Forest Service.

The Bureau's first two Las Vegas land auctions held in September 1981 and December 1982 were unsuccessful--only 2-1/2 acres out of 1,000 were sold, yielding only \$37,600. To stimulate more sales, the Bureau reduced the appraised fair market value of 460 acres offered for sale on May 12, 1983. The reduced prices were only in effect for the day of sale. Afterwards, the unsold land would still be available for sale, but at appraised fair market value. Sixty-eight acres sold during the 1-day sale for \$1.1 million. This amount was \$173,000 less than the appraised fair market value. The use of a 1-day marketing period to justify a reduction in the land's fair market value does not comply with applicable requirements.

GAO recommends that the Bureau appraise and sell land in Las Vegas, Nevada, in accordance with federal fair market value requirements.

The report also points out that the Forest Service's acquisition of Lake Tahoe land has not been affected by the slow pace of Las Vegas land sales. For fiscal years 1982 through 1984, the Congress directly appropriated \$27 million for land acquisition from the Land and Water Conservation Fund. Receipts from Las Vegas land sales are to be used to replenish the Fund before fiscal year 1995.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON-D.C. 20548

B-207174

The Honorable Mike Synar
Chairman, Subcommittee on Environment,
Energy, and Natural Resources
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This report is in response to your request that we determine whether the Bureau of Land Management's (BLM's) land sale procedures were in accordance with fair market value requirements and whether the procedures affected the Forest Service's land acquisition program at Lake Tahoe.

The report discusses the procedures BLM used to sell public land in Las Vegas, Nevada, under authority of the Santini-Burton Act of 1980 (Public Law 96-586). It also discusses the Forest Service land acquisition program in the Lake Tahoe Basin which was authorized by the act. The report concludes that BLM's May 1983 sale did not comply with federal requirements that land be sold for no less than appraised fair market value and that the sales program has not had any effect on the Service's land acquisition program because direct payments are not made to the Service.

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Unless you announce its contents earlier, we plan no further distribution of this report until 30 days from the date of its issuance. At that time, we will send copies to the Secretary of the Interior and other interested parties. We will also make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles A. Bowler".

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE
SUBCOMMITTEE ON ENVIRONMENT,
ENERGY, AND NATURAL RESOURCES
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

THE BUREAU OF LAND MANAGE-
MENT SHOULD FOLLOW FAIR
MARKET VALUE REQUIREMENTS
IN SELLING LAND IN LAS
VEGAS, NEVADA

D I G E S T

On May 12, 1983, the Department of the Interior's Bureau of Land Management (BLM) sold 68 acres of public land in the Las Vegas, Nevada area for \$1.1 million. BLM offered the land at 15 percent below appraised fair market value.¹ Four parcels sold for \$173,000 less than appraised fair market value. The sale was made pursuant to the Santini-Burton Act of 1980, which directed the sale of about 7,000 acres of high-value public land in the Las Vegas area and the acquisition of environmentally sensitive land in the Lake Tahoe Basin of California and Nevada. The Department of Agriculture's Forest Service administers the acquisition program at Lake Tahoe.

The Chairman, Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, requested GAO to review the May 1983 sale to determine whether it was in accordance with federal fair market value requirements. The Chairman also asked GAO to review other BLM land sales in Las Vegas and the effect of such sales on the Forest Service's land acquisition program in Lake Tahoe. (See pp. 1 to 4.)

BLM'S LAS VEGAS LAND SALES PROCEDURES

The Santini-Burton Act requires BLM to jointly develop regulations with Clark County and the cities of Las Vegas and North Las Vegas to implement the Las Vegas land sales program.

¹Fair market value is defined as the amount in cash, or on terms reasonably equivalent to cash, for which the property would be sold by an informed owner willing, but not obligated, to sell to an informed buyer, desiring, but not obligated, to buy.

The act further requires that land sales be consistent with the provisions of the Federal Land Policy Management Act of 1976 (Public Law 94-579) except to the extent necessary to expeditiously carry out the purposes of the act.

In March 1981, BLM and the local governments agreed that Section 203 of the Federal Land Policy and Management Act and BLM's regulations issued pursuant to section 203 should be used to conduct the land sales program. This criteria requires that public land be sold for no less than fair market value as determined by an appraisal adhering to principles of the Uniform Appraisal Standards for Federal Land Acquisitions.

BLM's preferred sale procedure is an auction, followed by over-the-counter sales of parcels not sold at auction. Before a public land sale, BLM or contractors appraise each parcel's fair market value. The appraised value establishes BLM's minimum acceptable bid at the auction. The appraised value also is the minimum price which an over-the-counter purchaser must pay. Before the auction, BLM notifies the public of the minimum bid, that is, the appraised fair market value. (See pp. 1 and 2.)

RATIONALE FOR THE MAY 1983 SALE AT A 15-PERCENT DISCOUNT

BLM's interpretation of the Santini-Burton Act was that land in Las Vegas should be sold as quickly as possible to offset the cost of the Forest Service buying land in Lake Tahoe. BLM offered 695 acres in a 1981 auction; however, only 2-1/2 acres were sold for \$37,600. In a December 1982 auction, BLM offered 305 acres for sale, but none was sold. However, 41 of 68 parcels (about 60 percent) sold at subsequent over-the-counter sales. According to BLM officials, high interest rates and the slowdown in local real estate development were in part adversely affecting the sales program. (See pp. 5 to 9.)

Concerned about lagging auction sales, BLM decided that it would try a different approach for its May 1983 auction of 46 parcels consisting of 460 acres originally offered for sale in 1981. The 46 parcels had been appraised in September 1982 for \$5.6 million,

but BLM concluded that this appraisal was too high to attract buyers to an auction. To stimulate more sales, BLM reduced the appraised fair market value by 15 percent to reflect what it believed was a revised fair market value for a 1-day only sale. The reduced prices were only in effect on May 12, 1983. Afterwards, the unsold land would still be available for sale but at the higher appraised fair market value. As shown below, four parcels (68 acres) were sold. (See pp. 9 and 10.)

<u>Acres</u>	<u>Appraised value</u>	<u>15 percent discount</u>	<u>Sale price</u>
10	\$ 93,500	\$ 79,500	\$ 79,500
10	89,000	76,000	76,000
43.11	948,000	806,000	806,000
5.34	139,000	118,500	135,000
<u>68.45</u>	<u>\$1,269,500</u>	<u>\$1,080,000</u>	<u>\$1,096,500</u>

A March 24, 1983, BLM press release indicated that BLM's goal for the May 1983 auction was to set its price lower than the appraised value in order to sell as much of the land as possible at the auction. BLM's Chief Appraiser at the state office said that the lower prices were patterned after 1-day auctions of similar private property in Las Vegas. These auctions were foreclosures and bankruptcy sales. BLM officials at the Nevada State Office and Las Vegas District Office believed that the lower prices complied with existing federal requirements because the prices represented fair market value for a 1-day sale. (See pp. 11 to 16.)

MAY 1983 SALE DID NOT COMPLY
WITH FEDERAL REQUIREMENTS

Contrary to BLM's view, GAO believes that the May 1983 1-day discount procedure did not comply with applicable regulatory requirements that public land be sold for no less than fair market value, as determined by an appraisal. GAO believes that fair market value cannot be based on an assumption that the government must sell its property in 1 day. This is inconsistent with the reasonable time concepts found in applicable federal and legal standards on fair market value. Such conditions make the sale analogous to forced or panic sales typical of sellers acting under duress, which according to federal and professional criteria is not the fair market value. (See pp. 16 to 22.)

Although BLM's reason for lowering prices 15 percent for the May 1983 auction did not comply with the applicable fair market value requirements, it is possible that existing market conditions in May 1983, such as a sluggish real estate market, could justify a lowered appraised value for a 1-year marketing period. There is no way to verify this, however, because GAO did not obtain an independent appraisal of the property at the time of sale to update BLM's September 1982 appraisal. (See p. 22.)

NOVEMBER 1983 SALE

BLM concluded that the May 1983 auction result was an improvement over previous auctions and took steps to repeat the procedure for a sale planned in November 1983. However, BLM decided against using a 1-day market discount shortly before the November 1983 auction to avoid public criticism. BLM sold 17 parcels (237 acres out of 468 acres) at this sale for \$3.3 million, about \$500,000 more than the appraised fair market value. (See p. 10 and 11.)

PROCEDURES FOR FUTURE SALES

A BLM official told GAO that 1-day market discounts might be used again if Santini-Burton Act sales were slow. He said that if GAO were to find the 1-day procedure inconsistent with federal requirements, BLM might have to revise Santini-Burton Act regulations to authorize 1-day discounted land sales. He said the act allows BLM and the affected local governments to do this if necessary to expeditiously carry out the purposes of the act. (See pp. 12 and 13.)

GAO believes that the principles contained in the Uniform Appraisal Standards provide a sound basis for BLM to establish appraised fair market value and questions whether current conditions support the need to adopt new regulations to permit a 1-day discounted land sale. (See pp. 22 and 23.)

As an alternative to the 1-day auction, GAO discussed with BLM officials in October 1983 the possibility of using a sealed competitive bid procedure for the Las Vegas land sales. Under this procedure BLM could allow several weeks for the public to submit sealed bids on any tract offered in Las Vegas for at least the appraised fair market value. This

flexibility could improve public participation in the sales program. In November 1983, BLM issued instructions adopting this procedure. For the January and February 1984 sealed bid openings in Las Vegas, BLM sold 92.5 acres (out of 950 acres offered) for \$1.2 million, which was about \$13,000 more than the appraised fair market value. (See pp. 20 to 22.)

Also, in contrast to BLM's view, GAO believes that as long as current conditions prevail, it is not necessary to quickly sell land at a discount in order to generate funds for the Forest Service's land acquisition program. This is discussed below.

RELATIONSHIP OF LAS VEGAS LAND SALES TO LAKE TAHOE ACQUISITION

As authorized by the act, the Forest Service receives funds for Lake Tahoe land acquisition through annual appropriations by the Congress from the Land and Water Conservation Fund. For fiscal years 1982-84, the Congress appropriated about \$27 million for such land acquisition. The Forest Service plans to acquire about 20,000 acres around Lake Tahoe at an estimated cost of between \$85 million and \$280 million, depending upon a number of factors affecting the value of the land.

The Conservation Fund was established in 1965 to provide for the acquisition of recreation lands. The Fund receives \$900 million annually from four sources--offshore oil and gas leases, surplus property sales, recreation fees, and the motorboat fuels tax. At the end of fiscal year 1983, the Fund had an unappropriated balance of about \$2.5 billion. The Fund has more than enough revenue to cover appropriations to the Forest Service for its planned land acquisition program at Lake Tahoe.

Although the Forest Service receives annual appropriations from the Congress, the Santini-Burton Act requires BLM's Las Vegas land sales revenue to reimburse these appropriations by fiscal year 1995. The act requires sale revenues to be deposited annually in the Department of the Treasury's general fund. For repayment purposes, funds are to be transferred from the Treasury's general fund to the Land and Water Conservation Fund by fiscal year 1995. (See pp. 24 to 26.)

RECOMMENDATION TO THE
SECRETARY OF THE INTERIOR

GAO believes that BLM has misinterpreted its public land sale regulations and understands that BLM may use the 1-day market discount procedure in future sales. Therefore, GAO recommends that the Secretary of the Interior direct BLM to sell land in Las Vegas, Nevada, in accordance with federal fair market value requirements. This would not preclude BLM from changing its regulations in the future as provided by the Santini-Burton Act. At this time, however, GAO does not believe such a change is necessary. (See p. 23.)

AGENCY COMMENTS

GAO did not obtain agency comments on this report. (See p. 4.)

C o n t e n t s

Page

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i

CHAPTER

1	INTRODUCTION	1
	BLM land sale policy and procedures under the Santini-Burton Act	1
	Objectives, scope, and methodology	3
2	LAS VEGAS LAND SHOULD BE SOLD ACCORDING TO ESTABLISHED FAIR MARKET VALUE STANDARDS	5
	The September 1981 Sale	5
	The December 1982 Sale	8
	The May 1983 Sale	9
	The November 1983 Sale	10
	Analysis of whether discount prices comply with fair market value requirements	13
	New sealed bid procedure for selling land will increase market time	20
	Conclusions	22
	Recommendation to the Secretary of the Interior	23
3	THE FOREST SERVICE LAND ACQUISITION PROGRAM AT LAKE TAHOE	24
	Relationship of Las Vegas land sales to Lake Tahoe land acquisition	24
	Conclusion	26

ABBREVIATIONS

BLM	Bureau of Land Management
FLPMA	Federal Land Policy and Management Act
GAO	General Accounting Office



CHAPTER 1

INTRODUCTION

The Bureau of Land Management (BLM), Department of the Interior, is directed to sell land around Las Vegas under the Santini-Burton Act, Public Law 96-586, 94 Stat. 3381 (1980). The act establishes a program to sell about 7,000 acres of high-value public land in the Las Vegas area to help urban expansion and to use the revenue to offset the cost of acquiring about 20,000 acres of environmentally sensitive land in the Lake Tahoe Basin of California and Nevada. The act authorizes the Congress to appropriate funds to the Forest Service, Department of Agriculture, for the Lake Tahoe acquisition program. The proceeds from BLM's land sales in Las Vegas are to repay these appropriations before fiscal year 1995.

On May 12, 1983, BLM held a public auction in Las Vegas to sell 46 parcels of land (460 acres). The sale brochure released in advance stated that minimum bids for each sale parcel would be less than the appraised value, a departure from BLM's practice of setting the minimum bid for public land sales at the appraised fair market value.¹ The sale brochure also stated that after the auction, any unsold parcels would be offered over-the-counter on a first come, first serve basis at the appraised fair market value. BLM's primary purpose, however, was to sell as many parcels as possible at the auction, rather than selling them later over-the-counter. Four parcels sold at the day of the auction for a total of about \$1.1 million, about \$173,000 less than the appraised fair market value. Within a few weeks of the auction, Las Vegas area newspapers reported charges that BLM violated federal law by selling land for less than its appraised fair market value.

The Chairman, Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, requested us to review BLM's May 1983 sale in Las Vegas to determine whether it was in accordance with fair market value requirements.

BLM LAND SALE POLICY AND PROCEDURES UNDER THE SANTINI-BURTON ACT

The Santini-Burton Act directs BLM to conduct a public land sale program in metropolitan Las Vegas, Nevada. BLM has little discretion to retain these particular public lands for other management purposes, except if the affected local jurisdictions do not want the land sold into private ownership or if BLM

¹Fair market value is defined as the amount in cash, or on terms reasonably equivalent to cash, for which the property would be sold by an informed owner willing, but not obligated, to sell to an informed buyer who desired, but is not obligated, to buy.

determines that the land has not been appropriately classified with adjacent land use by local jurisdictions. The act requires that the sales procedures, which BLM must develop cooperatively with local governments, be consistent with the Federal Land Policy and Management Act (FLPMA), (Public Law 94-579), except to the extent necessary to expedite the provisions of the Santini-Burton Act.²

FLPMA is BLM's basic statutory authority. FLPMA provided BLM with its first comprehensive mandate to manage the 450 million acres of public lands for permanent federal ownership. Under specified circumstances, FLPMA authorizes the disposal (by sale or exchange) of public land for no less than fair market value. The regulations promulgated by BLM under FLPMA require that fair market value be determined by an appraisal adhering to the principles of the Uniform Appraisal Standards for Federal Land Acquisitions. FLPMA also requires that, except for certain cases, the sales be carried out by competitive bidding procedures established by the Secretary of the Interior. Under this provision, BLM's preferred sales method is a public auction, which can be followed by over-the-counter sales of land not sold at the auction.

In 1981, BLM and the local governments affected by the Santini-Burton Act--Clark County, city of Las Vegas, and city of North Las Vegas, agreed on regulations to implement the provisions of the Santini-Burton Act. As required by the Santini-Burton Act, these regulations are consistent with FLPMA. Before a public land sale, they require that BLM or contractors appraise each parcel's fair market value. The appraised value establishes BLM's minimum acceptable bid at the auction and is also the price which an over-the-counter purchaser must pay. Before the auction, BLM notifies the public of the minimum bid, that is, appraised fair market value.

Authority to sell public lands, including the Santini-Burton Act lands, has been delegated to the BLM Director by the Secretary of the Interior. In this respect, BLM's Director and other headquarters officials are responsible for the overall land resources management program and for establishing the procedures to sell all public land. The Nevada State Director, is authorized by (BLM Order 701, Section 19(a), to take actions on all matters related to sales of the Santini-Burton Act public lands. As such, he is responsible for implementing the Santini-Burton Act sales program and ensuring that it is consistent with regulations and established land sale objectives. The District Manager in BLM's Las Vegas District Office provides the day-to-day direction of the sales program.

²To exercise this exception, BLM would have to adopt new regulations for selling the Santini-Burton Act lands.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Chairman, Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, asked us to review BLM's procedure for the May 1983 auction using a discount based on a "[1]-day market exposure" criterion. The Chairman also asked that we review the fair market value assessments BLM made for a 1981 auction. After our review was initiated in June 1983, we learned that BLM was considering using a price discount for its upcoming sale in November 1983. Accordingly, we expanded the scope of our review to determine whether BLM would continue to sell land in Las Vegas at discounts from appraised fair market value and whether the discounts would affect the Forest Service's land acquisition program at the Lake Tahoe Basin under the Santini-Burton Act. We questioned whether BLM's use of a discount (based on a 1-day auction period) was consistent with applicable requirements that public lands be sold at not less than fair market value as determined by an appraisal.

To accomplish these objectives, we gathered information on BLM's public land sales under the Santini-Burton Act, particularly regarding the establishment of fair market value and the procedure developed for the September 1981 sale. We performed both legal and audit work and gathered and analyzed information from the Department of the Interior and BLM in Washington, D.C., California, and Nevada. We also analyzed federal statutes, particularly the Santini-Burton Act and the Federal Land Policy and Management Act of 1976; the Uniform Appraisal Standards for Federal Land Acquisitions; and applicable case law. In addition, we reviewed regulations governing BLM's appraisal and public land sale procedures as they apply to the Santini-Burton Act sales in Las Vegas. As agreed with the Subcommittee, we did not obtain an independent appraisal of the property that BLM offered for sale in May 1983.

We visited Department of the Interior and BLM offices in California and Nevada to interview agency officials and review their records, manuals, and procedures for administering the Santini-Burton sales program in Las Vegas. We discussed many aspects of the Santini-Burton land sales program with officials in BLM's Nevada State Office in Reno and the Las Vegas District and Stateline-Esmeralda Resource Area offices in Las Vegas. We interviewed the advising attorney in the Pacific-Southwest Regional Solicitor's Office in Sacramento, California, about his role in advising the Nevada State Office on the use of a discount auction procedure in May 1983.

We met with BLM's lead appraiser and Chief, Division of Lands, in the Washington, D.C., Lands and Renewable Resources Directorate. We discussed many aspects of the Nevada State Office's handling of the Santini-Burton sales program, procedures, and establishment of fair market value. We discussed BLM headquarters oversight and review of these procedures, what role headquarters had in deciding to use a discounted minimum bid in

May and November 1983, and BLM's opinions on whether these actions complied with BLM policy and requirements.

We interviewed the private appraisers retained in 1982 and 1983 by BLM to appraise parcels offered for sale under the Santini-Burton Act. We discussed their views on BLM's handling of market value at the May 1983 sale as well as BLM's contract requirement in August 1983 to provide an opinion of market value for a 1-day sale period as well as for a 1-year sale period. We obtained the appraisers' opinions on whether BLM's procedures assured that fair market value was obtained. We interviewed the President, American Institute of Real Estate Appraisers, and three officials of the Society of Real Estate Appraisers for their views of BLM's procedures in Las Vegas land sales and whether the procedures complied with their professional appraisal and fair market value standards. In addition, we interviewed four other appraisers. These appraisers had general knowledge of fair market value concepts and aspects of auction sales.

We met with officials in the Clark County, Nevada, Department of Comprehensive Planning to discuss their views of fair market value issues and BLM's sale procedures. This is the local agency with which BLM must jointly identify land for all Santini-Burton sales, as required by the act.

We met with Forest Service officials at the Lake Tahoe Basin Management Unit in South Lake Tahoe, California, to discuss the status of their acquisition program and the effects of BLM's land sales in Las Vegas on their funding. We obtained data on appropriations for land acquisition at Lake Tahoe Basin by the Forest Service.

We contacted officials in the Office of Inspector General, Department of the Interior, to determine if they had any work completed or ongoing concerning BLM's sale and appraisal procedures in Las Vegas, Nevada, under the Santini-Burton Act. They told us that they had not done any work or had any in progress on this matter.

Our review was made in accordance with generally accepted government auditing standards, except at the request of the Subcommittee, we did not obtain agency comments.

CHAPTER 2

LAS VEGAS LAND SHOULD BE SOLD ACCORDING TO ESTABLISHED FAIR MARKET VALUE STANDARDS

In May 1983, BLM offered 460 acres in Las Vegas for sale at 15 percent below the appraised fair market value. As a result, BLM sold 68 acres for \$1.1 million, which was about \$173,000, or 14 percent, less than the appraised fair market value. BLM's rationale for offering the land for sale at a discount rate was influenced by the unsuccessful auctions in September 1981 and December 1982. Those two auctions resulted in sales of 2-1/2 acres for \$37,600. To stimulate more sales in the May 1983 auction, BLM administratively reduced the appraised fair market values to reflect the conditions of a "[1]-day market exposure."¹ Satisfied that the 1-day market value strategy improved the sales at the May 1983 auction, BLM took steps to continue using this procedure for a sale planned in November 1983. However, BLM later decided not to use this procedure at the November sale to avoid public criticism.

We do not agree with BLM that a 1-day market exposure justifies an administrative decision to offer land for sale at prices lower than the fair market value established through an appraisal process. Such a pricing procedure is inconsistent with legal and professional definitions of fair market value and makes the government's sale analogous to a forced sale. Although BLM's reason for lowering prices 15 percent for the May 1983 sale did not comply with the applicable fair market value requirements, it is possible that other conditions existed which could justify a lower appraised value. There is no way to verify this, however, because we did not obtain an independent appraisal of the property at the time of the sale.

In November 1983, BLM issued instructions requiring sealed bidding procedures for all public land sales, including those in Las Vegas. We suggested this alternative procedure to BLM in October 1983 and believe that the use of sealed bids will improve participation and sales results.

THE SEPTEMBER 1981 SALE

On September 29, 1981, BLM held its first sale under the Santini-Burton Act. Due to time constraints, the minimum acceptable bid for each parcel was not established by an appraisal but by an expedited estimate-of-value procedure. BLM published interim regulations in September 1981 to use this alternative method for the September 1981 Santini-Burton sale.

¹A 1-day market exposure reflects the reduced price that a seller would expect to receive as opposed to the value of the land if it were exposed on the open market for a longer time.

BLM offered 695 acres in 91 parcels, with minimum bid values ranging from \$33,435 to \$2,709,334. Total minimum bid value for the 695 acres was about \$15.1 million. Only one 2-1/2 acre parcel sold for \$37,600 at the 1981 auction. Because of public criticism about the estimated values being too high, BLM decided not to re-offer the remaining parcels at the over-the-counter sales so that they could be appraised and offered again in the future. BLM later decided that formal appraisals would be required in future Santini-Burton Act sales.

Estimate-of-value procedure

The Santini-Burton Act required that the first offering of land in the Las Vegas area be held within 1 year of the December 23, 1980, enactment. For this reason, the BLM Nevada State Office decided to hold the first auction no later than the end of fiscal year 1981. It was late July 1981 by the time BLM and Clark County finalized the list of 695 acres to be offered at the September auction. Consequently, BLM decided there was insufficient time to formally appraise the parcels to establish fair market value and publish the minimum bids in advance of the auction. Therefore, BLM's Nevada State Office decided to use a new estimate-of-value procedure that would save time and expense. At the time, the Nevada State Office planned to make this procedure permanent for all Santini-Burton sales.

The alternative estimate-of-value procedure was done in August 1981 by the Clark County Department of Comprehensive Planning, with assistance from BLM's Las Vegas District office, using a computer analysis of parcels of land listed on the local Board of Realtor's Multiple Listing Service. The county analyzed all private vacant land offerings on a section, township, and range basis and detailed the average listing prices within each section. During August and September 1981, there was extensive debate within BLM and Department of the Interior offices in Nevada and Washington, D.C., over the validity of the estimated values.

BLM's Nevada State Office Chief Appraiser reviewed the data and determined that the values were unrealistic in many respects, primarily because the values reflected listed prices, not actual sale prices. The chief appraiser and others in the BLM State Office recommended that adjustments be made to the values by applying actual sales market data to the county estimated values. However, after the county declined to alter the original methodology to meet these concerns, BLM reduced the estimated values by 10 percent to account for brokerage fees and other inequities.

More dispute arose over the validity of this procedure for establishing fair market value. Since FLPMA requires public land to be sold for no less than fair market value and BLM regulations require that this be determined by an appraisal, the legality of the procedure had to be determined. An attorney in Interior's Office of the Solicitor reviewed the procedure and

found that the estimate-of-value procedure may not result in land being sold at fair market value. Therefore, he recommended that BLM develop interim regulations and a revised auction procedure to better assure that fair market value would be attained. He told BLM, however, that the regulations and new procedure should be temporary and apply only to the 1981 Santini-Burton Act sale and that future sales should adhere to the existing regulations that require an appraisal to determine the fair market value.

In response to this recommendation, BLM published interim regulations on September 4, 1981 (43 C.F.R. Section 2712, (1981)). They provided that the estimate-of-value developed by the county and the Nevada State Office would be used as the minimum bid, but that no parcel would be sold unless at least three bids were received. Fair market value would then be considered to be the highest of the bids received. The regulations allowed BLM to withdraw a tract from sale regardless of how many bids were received if BLM determined that the bid amount was not fair market value. This land would then be appraised and reoffered for sale in the future. In publishing the interim regulations, BLM justified departure from the usual appraisal procedure on the basis that the act required the first sale offering to be held before the end of the year. The interim regulations, which expired on December 31, 1981, allowed BLM to sell the land without having to make formal appraisals.

Appraisals required on future sales

Soon after the September 1981 sale, local realtors told BLM officials in the Las Vegas District Office that there were critical flaws in the estimate-of-value procedures. They told BLM that the estimated values were too high and that was a major reason why only 2-1/2 acres out of 695 acres were sold. The district office looked for methods to improve the use and application of the estimated value procedure. The BLM Director submitted another request to the Interior Solicitor's Office for a legal opinion on permanent regulations to use the estimate-of-value procedure instead of appraisals for all competitive public land sales. The advising attorney in the Solicitor's office who responded to the request told us that he advised BLM that appraisals would have to be the basis for determining fair market value for BLM's public land sales. In his opinion, appraisals legally assure that the government is a knowledgeable seller. BLM then decided to use formal appraisals for all future Santini-Burton Act sales.

In September 1982, contract appraisers provided BLM with appraisals on 90 of the parcels (692.5 acres) offered for sale in September 1981. The appraisers determined that the fair market value was about \$8.2 million, or about \$6.9 million less than the \$15.1 million estimate-of-value developed by BLM and

Clark County officials in August 1981. The chief appraiser in the Nevada State Office cited this large disparity as indicative of the estimate-of-value technique's inadequacy and advised the state office to rely on appraisals for future Santini-Burton Act sales.

THE DECEMBER 1982 SALE

BLM's second auction under the Santini-Burton Act was on December 7, 1982, when 305 acres in 68 parcels were offered for sale. Total appraised value was \$11.3 million, with parcels ranging in price from \$37,200 to \$1.7 million. Appraisals were done by contract appraisers and reviewed and certified as fair market value by the chief appraiser. Bids were to start at the appraised fair market value, but none were tendered. The auction closed without BLM selling any land. Subsequently, 41 parcels were sold for a total of about \$3.6 million when BLM made them available for sale over-the-counter at appraised fair market values.

Despite the good over-the-counter sales, the record indicates that poor auction results surprised and disappointed BLM officials in Nevada because they believed pre-sale interest was high. Before the auction, BLM distributed sales brochures to about 600 interested parties, including local realtors and brokers. The brochure described each parcel's location, size, and appraised value. The Las Vegas District Office found that their regular contacts in the local real estate business believed the appraised values were "in the ballpark" and more reflective of the current market than the 1981 values derived by the estimate-of-value procedure.

After the auction, evaluating the reasons for the poor outcome, the district office found no indication that the appraisals were wrong, stating that several knowledgeable real estate professionals had told BLM that the appraised values were reasonable. Also, the district office later noted that the 60-percent over-the-counter sales rate refuted isolated claims that the appraisals were too high. Neither the BLM Nevada State Office nor the district office wanted the next Santini-Burton auction, scheduled for May 1983, to repeat the performances of the first two sales. Although they acknowledged the good results of the over-the-counter sales following the December 1982 auction, both offices began considering why the auctions were unsuccessful and how to change that situation.

According to officials in the Las Vegas District Office, they believed general economic conditions in part contributed to poor sales. The assistant district manager noted that Las Vegas' basic tourism and gaming economy went into a slump starting in 1981, which he said depressed area land sales and development. District office officials also noted that higher interest rates made it more difficult for potential investors to raise the large amounts of cash required to buy expensive BLM land.

BLM interpreted the Santini-Burton Act as requiring an annual sale program and thus would continue to offer land for sale even during a depressed real estate economy. BLM's Deputy State Director for Resources said in the post-sale analysis:

"Because of the lack of success of the 1981 and 1982 P.L. 96-586 auctions, the public has begun to question our ability to sell land. Going through the motions of setting up, advertising, and conducting completely unsuccessful auctions has a negative influence on all those involved. Clearly, we must try something different."

THE MAY 1983 SALE

The next sale in May 1983 was a reoffering of 460 acres in 46 parcels, which had been first offered in the 1981 auction. The parcels had been appraised in September 1982, with fair market values (based on an assumed 1-year market exposure) ranging from \$36,250 to \$948,000 per parcel, or \$5.6 million total. About 10 weeks before the sale, the Nevada State Office decided to offer the lands at auction for prices discounted 15 percent below appraised fair market value. This was expected to increase participation in the auction, and hence, more sales. The 15-percent discount was an administrative adjustment to the appraised values to reflect what BLM thought were revised fair market values based on a 1-day market exposure. BLM widely advertised the discount sale in the weeks before the auction but did not reveal the size of the discount. A March 24, 1983, news release noted the lands would be offered at "bargain prices," and that the sale was a unique opportunity for investors to buy public lands "at less than their appraised value."

According to the Las Vegas District Office, there was a great deal of public interest before the sale as a result of the publicity on bargain prices. The sale brochure, released about 6 weeks before the auction, was sent to over 800 individuals, over half by request. Forty people attended the auction, with 15 registered to bid. As shown in table 1, of the 46 parcels offered, single bids were submitted for 4 parcels, and two bids were submitted for 1 parcel. On May 23, 1983, BLM made the unsold parcels available over-the-counter. As of February 1984, none of these parcels have been sold.

Table 1

Results of the Santini-Burton Act Sale
May 12, 1983

<u>Parcel</u>	<u>Acres</u>	<u>Appraised value</u>	<u>Minimum acceptable bid</u>	<u>No. of bidders</u>	<u>Sale price</u>
81-40 ^a	25	\$ 193,750	\$ 165,000	1	\$ 165,000
81-75	10	93,500	79,500	1	79,500
81-76	10	89,000	76,000	1	76,000
81-99	43.11	948,000	806,000	1	806,000
81-100	5.34	139,000	118,500	2	135,000
	<u>93.45</u>	<u>\$1,463,250</u>	<u>\$1,245,000</u>		<u>\$1,261,500</u>

^aThis sale was cancelled within 30 days. Final sales figures: 68.45 acres for \$1,096,500.

Source: BLM

The district manager compared the outcome of this auction with the September 1981 and December 1982 auctions and concluded it was a success, since 26 percent of the total land value offered sold.² He attributed the success largely to the use of the "marketing strategy employing an adjusted value for the [1]-day auction that was accepted as the minimum bid and informing the public that any unsold parcels would be offered over-the-counter at a higher price." He concluded that the 1-day auction strategy restored the viability of the auction process as well as the credibility of BLM's sale program. The Nevada State Office agreed that the 1-day-auction discounted sales price contributed to the fact that some land actually sold at the auction. As a result, the state office decided that the November 1983 sale would also employ this 1-day market procedure.

THE NOVEMBER 1983 SALE

BLM's next auction of Santini-Burton Act land was held on November 30, 1983, when 468 acres were offered at an appraised fair market value of about \$6.2 million. The 40 parcels ranged in value from \$16,500 to \$560,000. BLM had planned to use the 1-day value for this auction, but decided not to about 3 weeks before the scheduled auction. Seventeen parcels (238 acres) sold for about \$3.3 million, making this auction the most successful one so far in the Las Vegas program. The bidding was active on seven parcels, and BLM's revenue was \$484,300 more than the appraised fair market value as shown in table 2.

²This was before parcel 81-40 was cancelled (\$165,000). Actually, 23 percent sold.

Table 2

Results of Santini-Burton Act Sale
November 30, 1983

<u>Parcel</u>	<u>Acres</u>	<u>Appraised value</u>	<u>Sale price</u>	<u>Percent of increase</u>	<u>Number of bidders</u>
83-05	40	\$360,000	\$360,000		1
83-06	40	390,000	555,000	42.3 %	2
83-07	10	102,600	142,000	38.4	4
83-08	5	55,500	55,500		1
83-09	40	384,400	384,400		1
83-10	20	205,200	205,200		1
83-11	7.5	109,100	109,100		1
83-12	7.5	98,400	98,400		1
83-13	20	247,500	446,000	80.2	3
83-14	2.5	37,250	55,000	47.6	3
83-15	5	29,800	43,000	44.3	3
83-24	5	113,000	132,000	16.8	3
83-26	15	417,000	417,000		1
83-29	5	85,500	85,500		1
83-32	2.5	11,550	11,550		1
83-39	5.33	136,000	136,000		1
83-40	7.5	68,550	100,000	45.8	2
Total	237.83	\$2,851,350	\$3,335,650	17.0	

Source: BLM

The appraised values for the parcels were determined in September and October 1983 by two contract appraisers. BLM's appraisal contract required the appraisers to provide two estimates of market value--the 1-year market exposure value and the 1-day market exposure value. Specifically, the contract required the appraisers to provide a percentage range of adjustments to the 1-year appraised fair market value that would reflect a marketing condition of a 1-day sale. This, BLM believed, would give it the option of setting the November minimum bids at a lower "[1]-day only" price in order to improve sales. BLM decided after the May 1983 auction that establishing the 1-day market value by a formal appraisal would better comply with regulations requiring land be sold at no less than "appraised" fair market value.

To determine a discount for a 1-day sale, one appraiser used as evidence three bankruptcy court ordered auctions of vacant land in the Las Vegas area that had sold 18 to 40 percent below fair market value. However, this appraiser told us that he believes BLM's procedure for a 1-day sale is inconsistent with professional and federal appraisal standards on fair market value. These standards assume that the seller has a reasonable time to sell the property.

The second appraiser concluded that a 15-percent reduction in appraised fair market value would produce the 1-day sale value. This was based on discussions with large auction firms that advised him of general market value trends for auction sales. This appraiser told us that he did not use bankruptcy or other forced auction sales as comparables because he believed this would be an unacceptable comparison to set the government's minimum price.

BLM was undecided about 3 weeks before the auction about which appraised value to use for the minimum bids. The appraisers' reports indicated that 1-day sale values would be 15 to 40 percent below their appraised 1-year fair market values. The associate state director told us that BLM would have accepted bids within this range if BLM had used the 1-day sale procedure. Thus, if BLM had elected to accept bids in this range, the total minimum bid value would have been anywhere from \$3.7 million to \$5.3 million, or a reduction ranging from \$931,000 to \$2.5 million.

During the week of November 14, 1983, BLM decided to use the higher appraised fair market values to set the auction's minimum bids. According to BLM's associate state director, this decision was not based on a conclusion that 1-day appraised values conflicted with regulatory or statutory requirements on fair market value. Instead, he said that BLM decided not to use the 1-day value procedure to avoid adding to the critical public attention that had recently been directed at Interior's and BLM's sale and leasing policies in coal, gas, oil, and public lands.

The associate state director said that he would not rule out using 1-day sale values in future Santini-Burton Act sales if the sales were not going well at the higher appraised fair market values. He cited the Pacific-Southwest Regional Solicitor's Office informal verbal advice that 1-day market value complies with requirements and that this value reflects fair market value for a 1-day sale.

The associate state director also said that, while the 1-day value is less than appraised fair market value for the property on the market over an extended time, he believes that the regulations do not prevent BLM from establishing a selling price based on different periods of market availability. He said that BLM can choose to sell public land in a restricted time.

The associate state director said that, if we conclude that the 1-day procedure is inconsistent with existing requirements, BLM could revise Santini-Burton Act sale regulations to authorize the 1-day market value procedure. He said that section 2(a) of the act allows BLM to devise procedures in cooperation with the affected local governments that may not be consistent

with FLPMA and existing regulations, if necessary to expedite the purposes of the Santini-Burton Act.

ANALYSIS OF WHETHER DISCOUNT PRICES COMPLY WITH FAIR MARKET VALUE REQUIREMENTS

BLM's Nevada State Office consulted with appraisal, legal, and BLM headquarters staff before determining that the 1-day discount market procedure complied with existing regulations and represented a revised fair market value. To fully evaluate this position, we compared BLM's rationale with the legal, regulatory, and professional appraisal criteria that apply to BLM's procedures for selling public land under the Santini-Burton Act. We believe that BLM misinterpreted existing fair market value requirements and that its May 1983 sale did not comply with FLPMA requirements and implementing regulations that public land be sold for no less than appraised fair market value.

BLM's rationale for using 1-day marketing periods

BLM's action was based on its interpretation of the purposes of the Santini-Burton Act. From the beginning in 1981, BLM interpreted the Santini-Burton Act as establishing a high priority on public land sales in Las Vegas and an emphasis on expeditious sales and substantial revenues. After the disappointments of the first two Santini-Burton Act sales in 1981 and 1982 and despite the strong over-the-counter sales, BLM officials wanted the 1983 auction sales to be successful.

In preparing for the May 1983 auction, the December 1982 auction was studied by staff in BLM's Las Vegas District and Nevada State Offices to develop a better strategy. In analyzing the reasons for no sales at that auction, the district manager and the state office concluded that the appraised fair market values were unrealistically high for the auction process of selling land. Internal BLM memorandums show that the staff believed that potential buyers needed incentives to attract them to the public auction arena and to encourage them to make the decision to buy an expensive property in a relatively high-pressure situation. Since BLM was interested in selling the Santini-Burton lands at their auctions rather than more slowly through the year at the subsequent over-the-counter sale, BLM officials in the Nevada State and Las Vegas District Offices said that a minimum entry bid below the appraised value would be reasonably effective and would still bring a fair price.

The 15-percent discount for the May 1983 sale was based on the opinion of the Nevada State Office's chief appraiser. The associate state director had asked the chief appraiser about adjusting the appraised fair market values in order to stimulate bidding at the next auction. The chief appraiser told the associate state director that he did not have any new market data to indicate that the appraised values should be different. He noted that the appraisals' marketing period was considered

to be 1 year from the effective date of appraisal which was September 3, 1982. Thus, the appraised values reflected a price that BLM could expect to receive from a buyer over a 1-year market period.

The chief appraiser said, however, that given the same conditions of the appraisal, the additional sale restriction of a 1-day marketing period warranted a 10- to 15-percent reduction to the parcels' previously appraised values. The 10- to 15-percent reduction was based on recent private auctions in the Las Vegas area where property was sold under foreclosure or as the result of owner bankruptcy. Because this advice had come from the chief appraiser, the Nevada State Office concluded that the revised prices using a 10- to 15- percent discount would result in a new fair market value for a reduced market period.

Initially, there was some concern in the state and district offices that the regulations would have to be changed to allow an administrative adjustment to existing appraised values. Both the Deputy State Director for Resources and the Las Vegas District Manager said in separate memorandums in January and March 1983, respectively, that administratively discounting below appraised market values to stimulate sales at the auction was a procedure not provided for in existing regulations. As a result, in March 1983, the associate state director consulted with BLM's headquarters and Interior's Pacific-Southwest Regional Solicitor's Office about the discount procedure.

An attorney in the Pacific-Southwest Regional Solicitor's Office (who specializes in legal matters for BLM's California and Nevada State Offices) advised the Nevada State Office that as long as BLM's chief appraiser's analysis and conclusions showed there was an economic reason or restriction in the market period supporting a revised fair market value, there was nothing in the regulations or applicable law precluding a 1-day discount procedure. At the time this attorney provided advice to the Nevada State Office, he did so on the understanding that the chief appraiser had said that the 1-day sale adjustment was a reappraisal of fair market value. Thus, the attorney found no legal basis for disapproving the procedure.

In a March 4, 1983, note to the state director, the associate state director said he got approval to use the 1-day market values from BLM headquarters, including the Associate Director; the Deputy Director, Lands and Renewable Resources; and Chief, Division of Lands. The Chief, Division of Lands, told us that he did not disapprove the discounted sale proposal but he advised the associate state director to fully justify and support the use of the procedure.

Because of continued questions raised within BLM, the chief appraiser explained his opinion and analysis in a April 5, 1983, memorandum. In discussion with us, the chief appraiser explained the issues raised in this memorandum. He said that a reduced price, based on management's objective to sell land in

1 day, was not strictly in keeping with court and federal standards for fair market value. The intention to market the land in 1-day departed from the fair market value assumptions about the seller's motives and the time available to find a willing buyer. The chief appraiser noted that courts define fair market value as the highest price which a property will bring if offered for sale on the market by an informed seller allowing a reasonable buyer time to find an informed buyer. Neither the seller nor the buyer is under pressure to transact.

The chief appraiser said in his April 1983 memorandum:

. . . "It is highly likely that in order to sell in a short period of time the number of parcels that are to be offered under the Santini-Burton Bill. . . in Las Vegas Valley, BLM must be prepared to sell parcels for considerably less than [fair] market value as defined by the courts."

Although this statement appears inconsistent with BLM's interpretation of his initial advice, the chief appraiser told us that it accurately describes one consequence of management's intent to sell the Santini-Burton lands in a short time, that is, at the auctions.

The attorney in the Pacific-Southwest Regional Solicitor's Office saw the chief appraiser's memorandum in June 1983. He told us that he was surprised that the chief appraiser's statements implied that the 1-day sale values are considerably less than market value as defined by the courts. The attorney indicated that he originally understood the chief appraiser's opinion to be that the values were fair market values.

We asked the chief appraiser why BLM considered the auction to be a restricted marketing period, justifying a lower appraised value, when past procedures also used a 1-day competitive sale auction followed by over-the-counter sales without any change to the fair market value. The chief appraiser told us that management had established a unique objective for the Santini-Burton Act program. Sections 2(a) and (b) authorize and direct certain land in Clark County to be offered for sale but limit BLM to offering no more than 700 acres per calendar year. According to the chief appraiser, BLM interpreted that Public Law 96-586 required it to actually sell the land and to do so at the rate of up to 700 acres every year through fiscal year 1994.

A June 9, 1981, memorandum from the Las Vegas District Manager to the state director connotes the same interpretation,

"By enacting P.L. 96-586, Congress has made the meaningful decisions. Clearly, there is no discretion regarding whether to sell land or not. . . .The Santini-Burton land sale program can best be served by simply accepting the fact that Congress has placed us in the business of offering 700 acres of land in Las Vegas Valley for sale each year until 1995.. . ."

Criteria for determining fair market value

In evaluating the propriety of the discount procedure used by BLM in May 1983, we addressed the issue of whether the May 1983 adjustment for the 1-day market period is consistent with applicable statutory and regulatory requirements.

Section 2(a) of the Santini-Burton Act requires that disposal of the Clark County, Nevada, lands

". . . be in accordance with regulations developed jointly by the Secretary and the affected local governmental jurisdictions and shall be consistent with the provisions of the Federal Land Policy and Management Act [FLPMA] and other applicable law except to the extent necessary to expeditiously carry out the provisions of this Act."

Section 203(d) of FLPMA provides that "sales of public lands shall be made at a price not less than their fair market value as determined by the Secretary." Fair market value is not defined in FLPMA and the legislative history provides little indication of congressional intent regarding fair market value determinations. Thus, section 203(d) leaves the specifics of determining fair market value to the discretion of the Secretary of the Interior. However, the Secretary has limited his discretion by promulgating regulations prescribing a method to determine appraised fair market value in 43 C.F.R. section 2710. The policy section of those regulations provides:

"Sales under this part shall not be made at less than fair market value. Such value is to be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the Uniform Appraisal Standards for Federal Land Acquisitions."³

³This is a 1973 government publication by the Interagency Land Acquisition Conference. The booklet contains the standards recommended to the major federal land-acquiring agencies to adopt so that uniform land appraisal and principles would be achieved. BLM adopted the standards for public land sales.

The Uniform Appraisal Standards for Federal Land Acquisitions (Uniform Appraisal Standards) define fair market value as:

". . .the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy. In ascertaining that figure, consideration should be given to all matters that might be brought forward and reasonably be given substantial weight in bargaining by persons of ordinary prudence, but no consideration whatever should be given to matters not affecting market value." (Emphasis added.)

Thus, the FLPMA implementing regulations require BLM to dispose of public lands at not less than fair market value as determined by an appraisal conducted in accordance with the principles set forth in the Uniform Appraisal Standards. Although the Santini-Burton Act does not specify that BLM's disposal program in Las Vegas be at fair market value prices, because section 2(a) requires consistency with FLPMA (unless regulations are promulgated otherwise), those fair market value requirements apply. Furthermore, in March 1981, BLM and the local governments affected by the act (Clark County, and the cities of Las Vegas and North Las Vegas) agreed on the regulations promulgated for section 203 of FLPMA to implement the provisions of the Santini-Burton Act.

The Uniform Appraisal Standards acknowledge the complexities of determining fair market value of land and the difficulty of pinpointing an estimated value in exact dollars. Nevertheless, an appraiser, if properly considering all relevant factors and providing supporting data, should conclude that his or her opinion most nearly represents the fair market value of the property.

The Uniform Appraisal Standards developed criteria for determining fair market value that build upon common law. The common law definition of fair market value has primarily evolved through court cases on the acquisition of private land by the federal government in eminent domain disputes. Since BLM has adopted the Uniform Appraisal Standards for its public land sale procedures, the criteria on fair market value established in eminent domain litigation is relevant to an analysis of land sale appraisal.

In addition to assuming that both the seller and buyer are willing and unpressured, most court definitions of fair market value also assume that a reasonable time has been allowed for exposure in the open market to find a knowledgeable buyer and negotiate the sale terms. The reasonable time and willing seller elements are said to be added to the definition of fair

market value to exclude mere "forced sale" prices. The exclusion of forced sale prices is also achieved through the requirement articulated by some courts that market value be determined according to "ordinary circumstances" or "normal conditions."

The courts have held that fair market value is the price property will bring in the hands of a prudent seller at liberty to fix the time and condition of sale, that is, not panic value, auction value, speculative value, or a value fixed by depressed or inflated prices. Thus, the definition of fair market value which has evolved in the courts parallels that of the Uniform Appraisal Standards with the inclusion of the concept of reasonable time.

BLM has no authority to adjust prices for reasons unrelated to fair market value

Although under certain circumstances BLM can adjust appraisals on the basis of in-house expertise to reflect changed conditions, the question remains whether a discount based on a reduced market period was consistent with the applicable statutes and regulations. In determining fair market value, the Uniform Appraisal Standards state that any substantial bargaining factors may be considered, but that no consideration should be given to matters not affecting market value. Court cases on the subject generally treat forced sales or auction sales as extraordinary situations, outside the stream of normal market conditions. This issue arises in the context of eminent domain proceedings because the method of valuation most often employed in those cases is one which relies on a comparable sales approach. In appraising fair market value, the preferred method recognized by the courts is comparable sales.⁴ The reasonable time and willing seller requirements in the definition of fair market value also address the concept that fair market value is usually not obtained under "stressed" or "forced" conditions.

Professional appraisers told us that their standards for appraising fair market value assume that the seller is willing, but not obligated to sell, and has a reasonable time in which to find a buyer. The President of the American Institute of Real Estate Appraisers said that an appraiser could analyze the market for comparable 1-day sales for a client if the client's intent is to sell quickly, rather than maximize the return. He said that while a review of comparable sales might not show any price difference between the 1-day sale and normal market sales, he suggested this is usually not the case. The appraisers generally indicated that quick sales such as auctions are generally distress sales, where the seller receives a below-market price. Such a sale is not considered to reflect fair market value, and

⁴Generally, comparable sales are so similar in time, quantity, and quality with the property taken that the prices paid are relevant to market value of the property taken.

an appraiser should not use this as a comparable in appraising fair market value for another property.

We do not agree with BLM's 1-day marketing period rationale for adjusting appraised fair market values. Such rationale is inconsistent with established standards and definitions of fair market value. BLM's "[1]-day only" marketing strategy and supporting appraisal assumptions are analogous to using forced sale values as comparables in setting a fair market value for condemned property.

In fact, BLM provided information in August 1983 to the two contract appraisers on recent bankruptcy court-ordered auctions of vacant property in the Las Vegas area, suggesting that this data be used in appraisals for the November 1983 sale. One contract appraiser used the data as evidence for adjustments for a 1-day sale, though he did not present this data as the fair market value. The second appraiser, who declined to consider the provided data, told us that he believed the data was an inappropriate comparison.

BLM's objective to sell as many or all of the 46 parcels on May 12, 1983, rather than carrying a large inventory for over-the-counter sales, strikes us as a major departure from the rules that a reasonable time is a built-in element of fair market value, and that the government is assumed to be a willing, but not obligated seller. The chief appraiser correctly described this very outcome of BLM's 1-day sale policy in his April 5, 1983, memorandum. The chief appraiser provided the definition of fair market value and emphasized its "reasonable time" aspect. Describing the 1-day sale and discount strategy as management's policy to sell as many parcels as possible within a short period of time, he concluded that "BLM must be prepared to sell parcels for considerably less than market value as defined by the courts."

This conclusion is further supported by the fact that the professional appraisers said that auction sales are generally distress sales, where property sells below market value, because the seller is in a hurry to sell. In fact, BLM's chief appraiser told us that private sector auction sales in Las Vegas are typically bankruptcy or otherwise forced sales. We believe that using these comparables will indicate a market price, but not the fair market value.

The outside appraisers characterized BLM's decision to adopt a 1-day only auction price as a marketing strategy, rather than a recognized criterion for adjusting fair market value. BLM's earlier internal memorandums and public press releases support this conclusion. The Las Vegas District Manager wrote in a January 10, 1983, memorandum to the state director that a reduced price at a 1-day auction would ". . . make it appear to the buyer that he does, in fact, have an opportunity to get a bargain."

The March 24, 1983, press release publicized the May auction as a bargain for investors and contained several statements that the agency fully expected to sell the tracts for less than appraised value, and that they were optimistic about demand since the local economy had improved as evidenced by an upsurge in local building permits. Only after the auction, when BLM was criticized for selling public land for less than fair market value, did BLM publicly explain that a 1-day sale merited a lower appraised value, arguing that this was still fair market value.

We do not believe that 1-day discounted market values comply with existing regulatory requirements for public land sales or the standards of professional appraisers for appraising fair market value. Applicable statutes and regulations require that public land be sold for no less than fair market value, as determined by an appraisal. BLM has some discretion in determining what various factors of the market will be analyzed in the appraisal for their effect on fair market value and there might be occasions to adjust existing appraised values before a sale.

We do not believe however, that a policy to sell public land in 1 day, using bankruptcy court-ordered auctions as models, conforms with the fair market value standards as established by the government's Uniform Appraisal Standards and professional real estate appraisers organizations, or court decisions pertaining to fair market value standards. BLM's attempt to justify the fair market value by using or considering 1-day market values derived from forced sales sets an undesirable precedent for the public land sales. Furthermore, if BLM accepts prices as much as 40 percent below fair market value, this could depress real estate prices of other properties in the area.

NEW SEALED BID PROCEDURE FOR SELLING
LAND WILL INCREASE MARKET TIME

When we interviewed Las Vegas District and Nevada State Office officials in August 1983, some said that BLM's sales regulations required competitive sales by public auction. Memorandums between the two offices indicate that this was the general interpretation of the sales regulations. Their experience with auction sales in the Santini-Burton program up to then had been largely disappointing. The consensus among the staff was that an auction was a difficult procedure for finding buyers, particularly when the local real estate market was depressed. After using the discount procedure in the May 1983 sale, the Las Vegas District Manager concluded in a memorandum to the Nevada State Office Director that lower prices improved auction sales. While acknowledging that the discount procedure could mean less revenue from each sale for the government, the Las Vegas District and Nevada State Office officials said that more land would sell, and thus overall, more revenue would result. The Las Vegas District Manager said in a memorandum to

the state director that auctions would continue unless the sale regulations were changed. To make them a viable way to sell land and produce adequate funds for Lake Tahoe land acquisition, the Las Vegas District and Nevada State offices concluded the 1-day discount was necessary.

We believe that the field staff interpreted the competitive sale regulations too narrowly. Neither section 203 (f) of FLPMA nor the regulations (43 C.F.R. 2711.3) require BLM to use an auction, per se, to sell land. The general procedure required is a competitive sale, and sections 2711.3-1 (c)(d) allow either sealed or oral bidding. More importantly, the regulations allow sealed bids to be submitted to BLM over an extended time. Thus, potential bidders have more flexibility to prepare and submit a bid than under a 1-day auction process.

In October 1983, we discussed the sealed bid procedure with BLM headquarters officials as an alternative to the 1-day auction process. We believed that the sealed bid process might increase participation in the sales program and could eliminate the need for reduced prices based on the 1-day market period. Headquarters officials agreed that a sealed bid procedure would be consistent with the regulations.

On November 23, 1983, the BLM Director issued new instructions on public land sales. The instructions state that sealed bids will be the only acceptable method of bidding in competitive public land sales. This is applicable not only to the initial sale, but also for all remaining parcels formerly offered over-the-counter. The Nevada State Office did not use sealed bids for the November 30, 1983, auction because the auction procedure had already been arranged by the time the instructions were issued by the Director. However, the sealed bid procedure is being used during monthly offerings of the tracts remaining from the auctions held between December 1982 and November 1983.

Results at the sealed bid sales in January and February 1984

BLM's first use of the sealed bid procedure in Las Vegas was January 12, 1984. Starting December 1, 1983, BLM began accepting sealed bids on the 156 tracts (950 acres) remaining from earlier auctions. These tracts had an appraised fair market value of \$17.6 million. BLM received nine sealed bids on six tracts (82.5 acres) by January 12, 1984, for a total sale of \$818,273. This was about \$7,300 more than the appraised fair market value. The most recent (Feb. 15, 1984) monthly sale results were four sealed bids submitted for four 2-1/2 acre tracts. Total sale revenue was \$334,755, or \$5,555 more than appraised fair market value. The next major offering of new tracts is scheduled for September 1984. We believe these early results with the new procedure are promising.

CONCLUSIONS

In the May 1983 auction, BLM administratively discounted the appraised fair market value of 460 acres by 15 percent. This was done to stimulate bidding and to increase sales in the auction process. BLM believed that the discounted prices represent a revised fair market value for a 1-day market exposure. Nevada State Office officials reached this view after consulting with BLM's chief appraiser, headquarters personnel, and a Department of the Interior attorney.

We believe that BLM misinterpreted the applicable statutory and regulatory requirements relating to the definition of fair market value for public land sales. FLPMA, BLM sales regulations, the Uniform Appraisal Standards, professional appraisal standards, and relevant court decisions indicate that fair market value should not be based on an assumption that the government must sell its property in 1 day. Such a constraint is analogous to "forced" or "panic" sales typical of duress sales. This clearly does not conform with generally accepted standards for fair market value that assume the seller has a reasonable time in which to find a buyer and is not obligated to sell.

Although BLM's reason for lowering prices 15 percent did not comply with applicable fair market value requirements, it is possible that existing market conditions in May 1983, such as a sluggish real estate market, could justify a lower appraised value for a 1-year marketing period. There is no way to verify this, however, because we did not obtain an independent appraisal of the property at the time of sale to update BLM's September 1982 appraisal.

BLM's Nevada associate state director said that, if we conclude that the 1-day procedure is not consistent with existing regulations, BLM could correct the inconsistency by promulgating revised Santini-Burton Act sale regulations. New regulations would have to be promulgated in cooperation with affected local governments to establish the authority to use the 1-day market value procedure. He said that section 2(a) of the act allows BLM to devise procedures that may not be consistent with FLPMA, if necessary to expedite the provisions of the Santini-Burton Act.

We do not believe new regulations are advisable at this time for several reasons. First, lowering prices to stimulate sales is unnecessary in view of BLM's substantially improved sales since early 1983. Second, the sealed bid procedure implemented in November 1983 may improve participation in the Las Vegas program. Finally, the existing regulatory, legal, and professional standards on fair market value provide a sound approach for BLM's program. If BLM were to depart from these standards and base their appraisals on less than fair market value, the government would not only lose revenue, but also property values of nonfederal land in Las Vegas could be affected.

RECOMMENDATION TO THE
SECRETARY OF THE INTERIOR

We believe that the Bureau of Land Management has misinterpreted its public land sale regulations and we understand that BLM may use the 1-day market discount procedure in future sales. Therefore, we recommend that the Secretary of the Interior direct BLM to sell land in Las Vegas, Nevada, in accordance with federal fair market value requirements. This would not preclude BLM from changing its regulations in the future as provided by the Santini-Burton Act. At this time, however, we do not believe such a change is necessary.

CHAPTER 3

THE FOREST SERVICE LAND ACQUISITION

PROGRAM AT LAKE TAHOE

The Congress has appropriated \$27 million to the Forest Service from the Land and Water Conservation Fund specifically for Lake Tahoe Basin land acquisition since fiscal year 1982. The acquisition program began in the same year and has continued at a stable and active yearly rate of \$10 million. BLM's requirement under the act is to repay appropriations made to the Forest Service prior to fiscal year 1995 with proceeds from Las Vegas land sales. BLM's revenue is initially deposited into the U.S. Treasury's general fund. For repayment purposes, funds will be transferred before fiscal year 1995 from the Treasury's general fund to the Conservation Fund. The Conservation Fund was established in 1965 to acquire land for recreation and conservation purposes.

RELATIONSHIP OF LAS VEGAS LAND SALES TO LAKE TAHOE LAND ACQUISITION

BLM officials interpreted the Santini-Burton Act as a mandate from the Congress to offer Las Vegas land for sale, and to do so on a regular, "expeditious" basis in order to produce revenues for the Forest Service's land acquisition in the Lake Tahoe Basin. We reviewed the effect of BLM's sales on the Forest Service's land acquisition program at Lake Tahoe.

The Santini-Burton Act contains two separate authorizations for the land acquisition program at the Lake Tahoe Basin. For fiscal years 1982 and 1983, the act authorized a total of \$30 million (actual appropriations for these fiscal years were only \$16.7 million). For each subsequent fiscal year, the act authorizes appropriations equal to the total public land sales revenue from Clark County, Nevada, after October 1, 1978,¹ offset by prior years' appropriations after fiscal year 1983. Under this formula, the total of all Las Vegas sales through February 15, 1984, (\$23 million) was available for authorization in fiscal year 1984 and subsequent fiscal years.

¹In fiscal years 1979 through 1981, BLM sold about 644 acres of public land in the Las Vegas metropolitan area. Total sale revenue was \$13.5 million. These sales were made under the Federal Land Policy and Management Act. Eighty-five percent of BLM's sales revenues, starting with the first Santini-Burton Act sale in September 1981, are deposited in the Treasury's general fund.

The Congress appropriated \$10 million in fiscal year 1984, which left an authorized balance of \$13 million. BLM plans to continue the monthly sealed bid sales for tracts left over from previous sales and offer new parcels in September 1984. Revenue from these sales will increase the authorized funding level. Should land sale revenues in Las Vegas not be sufficient in future fiscal years to offset the amount the Congress appropriates to the Forest Service, future authorizations could be affected.

The forest supervisor at the Lake Tahoe Basin Management Unit addressed the effect of BLM's slow sales program and discount strategy on the acquisition program. He said that since the Forest Service does not receive funds directly from BLM, but instead receives annual appropriations from the Land and Water Conservation Fund, there has not been any effect to date on the progress of acquisitions. The Forest Service plans to acquire, either by purchase or exchange, about 20,000 acres around Lake Tahoe, at an estimated cost between \$85 million and \$280 million. Final cost will depend upon a number of factors affecting property values.

The Santini-Burton Act requires that BLM annually deposit sales revenues in the Treasury's general fund. For repayment these funds are to be transferred to the Conservation Fund prior to fiscal year 1995 in an amount equal to that actually appropriated from the Conservation Fund. BLM has not yet transferred funds from the general fund to the Conservation Fund. As of February 14, 1984, BLM land sales receipts totaled about \$9.5 million from sales starting in September 1981.

The nontransfer to date of BLM's funds has not affected amounts available in the Conservation Fund because the Fund receives \$900 million each year from four other sources of federal receipts--Outer Continental Shelf Lands oil and gas leases, the motorboat fuels tax, recreation fees, and surplus property sales. The Conservation Fund was established in 1965 to acquire land for recreation and conservation. Over 90 percent of the Conservation Fund's annual deposit comes from Outer Continental Shelf revenues. Also, the Conservation Fund has carried over large unappropriated balances in recent years and had a balance of about \$2.5 billion at the end of fiscal year 1983. Consequently, there is little risk that Forest Service appropriations will not be covered due to a lag in BLM deposits.

Section 2(e) of the act requires the Secretary of the Interior to submit a report semiannually to congressional legislative committees on income and expenditures provided for by the Santini-Burton Act. BLM has not prepared any of the twice-yearly reports. BLM officials told us that the first report will be issued in fiscal year 1984 and will contain information on BLM and the Forest Service for fiscal years 1982 and 1983. The semiannual schedule will be followed thereafter.

CONCLUSION

The Congress has appropriated \$26.7 million for the Forest Service's land acquisition program at Lake Tahoe. The Santini-Burton Act requires that the sales receipts be deposited in the Treasury's general fund. BLM does not directly transfer funds to the Forest Service. The act authorizes future annual appropriations to the Forest Service from the Land and Water Conservation Fund tied to the amount of revenue obtained from the Las Vegas land sales after fiscal year 1978. These amounts adequately supported fiscal year 1984's \$10 million appropriation for Lake Tahoe Basin land acquisition, but future authorizations could be affected by the amount of Las Vegas land sales.

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