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ASA

VIA Email Attn: AD87

July 27, 2006

Director (630)
Bureau of Land Management
Administrative Record
Room 401 LS
Eastern States Office
7450 Boston Boulevard
Springfield, Virginia 22153

RE: RIN 1004-AD87

To Whom It May Concern:

As three of the largest professional associations representing real estate appraisers in the U.S., we write to you today to give you some observations regarding Proposed Rule 43 CFR Parts 2800 and 2880, 'Update of Linear Right-of-Way Schedule'. Although we realize the official comment period has since passed, we would very much appreciate it if you would still take the time to read and consider our remarks.

Section 367 of the Energy Policy Act of 2005 requires that the BLM revise the per-acre rental fee-zone value schedule by state, county, and type of linear right-of-way use to reflect current land values in each zone. In addition, linear rights-of-way granted under the Mineral Leasing Act of 1920 and Title V of the Federal Land Policy and Management Act of 1976 require the holder of a right-of-way to pay annually, in advance, the fair market value to occupy, use, or traverse public land for facilities such as power lines, fiber optic lines, pipelines, roads, and ditches. The proposed rule seeks to implement the instructions of all three of these acts.

We understand the statutory constraints the BLM is under, which is why fee schedules have been determined to be the most cost and time efficient way in which to comply with the law. If these fee schedules are ultimately utilized, we encourage you to use competent analyses to determine locally accurate value classes (as opposed to national or regional). We also encourage you to hire competent appraisers—such as those designated by our associations, for example—who are strongly familiar with the Scope of Work tenet found in the Uniform Standards of Professional Appraisal Practice (USPAP).

On the other hand, we'd like to express our concern about the fee schedules: indeed, as laid out in the proposed rule, the schedules are based on land values as well as the fair market value of current rents. Yet, nowhere in the proposed rule is it mentioned how those land values are established.

To determine a land value, certain things must be taken into consideration. The highest and best use of the property affected must be considered. Additionally, comparing sales of property with similar uses is

key. Finally and perhaps most importantly is the need to consider before and after valuation, in order to take into account the effect of the imposition of the easement for the right-of-way on the property.

We urge you to bear these points in mind when setting your Right-of-Way fee schedules, since the schedules will be based on the value of the underlying property. We believe the best procedure for determining 'value' is the appraisal process, whereby a professional appraiser utilizes and analyzes relevant market data specific to the property being considered, as demonstrated above with the three factors listed.

We oppose the use of valuation matrices designed to set rates that would apply to the use of the Rights-of-Way. Compared to a properly generated real estate appraisal, we believe valuation matrices are far less likely to provide an accurate fair market value conclusion, and would require continuous adjustment because of changing market conditions. Appraisals should be the preferred method of valuation.

The Bureau of Land Management is concerned that the appraisal process is costly, delay-filled and unpredictable. However, an appraisal conducted by a qualified appraiser operating under the Uniform Standards for Professional Appraisal Practice or subject to the Uniform Standards for Federal Land Acquisitions—moreover, a highly experienced appraiser designated by one of our three organizations operating as such—will be inherently more accurate than a broadly generalized fee schedule. The public interest requires that compensation for the use of public lands is based on the market value of the rights granted. Current market-based appraisals are the best way to accomplish this fair objective.

We appreciate your taking the time to read and consider these concerns. If we can be of any assistance, please contact Donald Kelly, Vice President of Public Affairs, at 202-298-5583 or dkelly@appraisalinstitute.org.

Sincerely,

Appraisal Institute
American Society of Appraisers
American Society of Farm Managers and Rural Appraisers