

MINUTES
Tribal Consultation Meeting
on
Revising Tribal Shares Formulas
for the
Real Estate Appraisal Program
Tuesday, August 04, 2009
9:00 am – 4:30 pm

Holiday Inn Grand
Billings, Montana

Presenters:

Eldred F. Lesansee

U. S. Department of the Interior
Deputy Chief Appraiser – New Mexico
Office of Appraisal Services (OAS)

Frank Perniciaro

U. S. Department of the Interior
Management Analyst
Office of External Affairs – New Mexico
Office of the Special Trustee for American Indians

Support Facilitators: William “Will” Spint

U. S. Department of the Interior
Appraisal Program Specialist - Montana
Office of Appraisal Services (OAS)

Roxanne Poupart

U. S. Department of the Interior
Regional Appraiser – Montana
Office of Appraisal Services (OAS)

Minutes Recorder: Mary McMurchie

Spherion Agency
Billings, Montana

Attendees:
AM Session

Lillian Wanna

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Sisseton, South Dakota
(605) 698-3911

Robert L. Scabby

S.R.P.M.I.C.
(480) 362-7479

Ernie Varhas
Shingle Springs
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Kim Stock
Shingle Springs
(530) 306-0984

Marilyn Delgado
Shingle Springs
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Tito Bass
Shoshone Bannock
(208) 478-3812

**Attendees:
PM Session**

Robert L. Scabby
S.R.P.M.I.C.
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John Allen
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Ft. Belknap Tribes
(406) 353-8447

SESSION I

9:00 am

Opening Remarks and Introductions – Frank Perniciaro

Frank Perniciaro welcomed all attendees and then shared the goal of the meeting.

Goal: To glean ideas as to how the Tribal Shares Program might be revised. Comments, suggestions and ideas were encouraged to be submitted from all attendees. The Presentation Team will then take the information message back to the Acting Special Trustee as input for further evaluation of their program.

There are 29 tribes in the nation. Out of 562 tribes this is a small number. We have Crow, Ft.. Belknap, Ft. Peck, Chippewa Cree, Sisseton, Wahpeton and Standing Rock contracts.

9:15 am **Slide Presentation on Tribal Shares Project – Presented by Frank Perniciaro and Eldred Lesanee**

Eldred Lesanee took over the program and also welcomed everyone. He introduced the slide show presentation portion of the program which included which background information of the region-by-region formulas is used to allocate tribal shares for the appraisal program.

Eldred invited Frank to give a short overview of his work as a Management Analyst for the United States Department of Interior's Office of External Affairs - Office of the Special Trustee for American Indians staff and their activities, which he did.

Eldred then gave a summary of his activities as the Deputy Chief Appraiser for the Office of Appraisal Services for the United States Department of the Interiors Office of Special Trustee for American Indians.

Frank then began the slide show and he and Eldred together covered:

Existing Tribal Share Formulas Now in Place

Many different formulas across 12 regions

- **Equal division:** Easy to calculate, but likely not in compliance with statute
- **Land-based division:** No strong correlation with appraisal needs
- **Population-based division:** No strong correlation with appraisal needs
- Workload-based division
- Hybrid division (weighted components)

Reasons for Revising the Tribal Shares for the Appraisal Services Program

- Tribal Shares calculated in 1995 have not changed.
- Tribal shares have not been recalculated in step with increased regional appraisal budgets.
- There may be inequities between tribes that have contracted or compacted at different times.

Benefits of Revising

- **Revised formulas will ensure uniformity and transparency in determining:**
 - Tribal shares, and
 - Funding residual for the inherent federal functions

Statutes and Regulations (please see attached handout – 2 slides)

Instructions: You can substitute OST for BIA

Residual (please see attached handout)

Appraisal Process (please see attached handout)

Idea I (Workload-based) (please see attached handout – 3 slides)

1. Overview
2. Workload-based (financial breakdown for Fiscal Years 2005, 2006, 2007)
3. Example of How Shares Can Change from Year-to-Year with a Dynamic Formula (financial breakdown for Fiscal Years 2006, 2007, 2008)

Robert Scabby, of S.R.P.M.I.C. asked a question, prefacing his question with the statement that his tribe is a self-governance tribe.

Question: **Why don't we implement this nationally right now?**

A discussion ensued with Frank and Eldred responding re the current situation's reality. Robert shared that the Workload Based Formula has worked well, but the problem is that the Tribal Shares Formulas have been frozen since 1995. He expressed that his tribe feels that the one size fits all approach needs to be revisited, though this could be problematical financially and perhaps detrimental budget wise, but it certainly needs to be revisited and addressed once again.

Idea 2 – Equal Division (please see attached handout)

(financial breakdown for Fiscal Years 2006, 2007, 2008)

Idea 3: Land-based (please see attached handout)

(financial breakdown re acres and percentages)

Introductions of the presenters and support facilitators were made at this time. All attendees introduced themselves from the floor also and identified whom they represented.

Idea 4: Population-based (please see attached handout)

(financial breakdown re tribal members and percentages)

Robert Scabby commented re land assignments and differences re this regarding different tribes and their various types of tribal governance.

Idea 5: Hybrid formula (weighted components) (please see attached handout)

(financial breakdown re land, population, workload, total weight)

Robert Scabby commented about Welfare Assistance Grant monies being similarly formula based. He recommended that the OAS check into the Welfare Assistance Grant formula based spread sheet, which is available for review, and take the opportunity to check into their formula implementation and criteria's for same.

Discussion on the floor of the meeting ensued. re the Welfare Assistance Grant funding levels which annually often change radically and service levels also change, all of which can get very confusing. Final reports were discussed and revisions of same and deadlines met and revisions sometimes needed for same. The problem that formulas are arbitrarily changed without consultation with the tribes was brought up and that this makes implementing the report process very complicated each year because of lack of consistency and continuity re past years and no explanations of why the changes occurred.

Title IV funding Sources (please see attached handout)

- Most of the tribes now compacting the appraisal program receive base funding from OSG.
- If it is determined that more funding is required under the new formula, OST will make up the difference with a supplemental transfer to OSG; this supplement is not added to the base due to dynamic nature of the formula.

Thank You (please see attached handout)

Addresses and telephone numbers are in provided inn the handout for questions, comments and suggestions from attendees, along with team members and their areas of responsibility/titles.

**GENERAL DISCUSSION – Eldred Lesansee and Frank Perniciaro
Facilitators**

Eldred and Frank discussed a recommendation that is on the government's table at this time re the formulation of a Tribal Federal Task Force, whose job task assignment will be to study comments and findings from tribes and come up with viable recommendations for the improvement of the revision of the Tribal Shares Formulas for the Real Estate Appraisal Program.

Marilyn Delgado – Question: Are their any California tribes that are actually contracting for appraisals?

Frank: Yes – but only one at this time. Frank expanded on this later on in the discussion.

Marilyn Delgado – Questions:

- Why are there so very few?

- How would it be broken down – by BIA region? That would make a huge difference.
- How will it impact California tribes? She shared that land based versus population based foundation criteria re making up regions was critically important, and how critical it is to recognize and differentiate between these two very different bases.
- Why aren't more California tribes contracting for this?

Discussion ensued.

Robert Scabby Question: Why aren't they involved in this appraisal program?

He commented that

- there is a huge difference in appraisals for commercial properties versus other lands and that this is a serious problem.
- Size is definitely not indicative of actual value.
- Direct Service Tribes and the differences in types of governance were discussed.
- It was mentioned that California has 280 tribes.
- The State of California has jurisdiction over their tribes.
- It was commented that the Federal government treats the tribes considerably better than the state governments.
- Self Governance Tribes would like their share of the funding and they supplement it.
- He also commented that the Department of the Interior and the Direct Service Tribes and the Self Governance Tribes are at times at variance with one another and there can be quite a bit of conflict between the two.
- The differences between Self Governance e tribes, which are “goal” oriented and government agencies, which are “process” oriented was discussed
- It was commented upon that whenever a government agency has to be involved in a process it tends to take an incredibly long time for them handle their end of procedures/

The subject of the Tribal Federal Task Force Team was revisited and it was commented upon that the Task Force needs to be created essentially because a central group needs to handle the actual problems at hand , rather than having meetings for just surveys and gathering of information and the making recommendations. The size of this prospective team was discussed.

Roxanne Poupart – Comment: There needs to be a good representation of all small, medium and large tribes and also of Direct Service Tribes as well as Self Governance.

Marilyn Delgado – Comment: It is up to the tribes to determine the number of representatives. She suggested no one should be limited as to the number of persons allowed on Task Force Team.

Eldred introduced a Flip Chart and went over the following points:

Definition of Workload

- **Total Appraisal Prog Budget**
- **Regional Appraisal Budget**
 - **Allocations (12)**
- Residual (20%) (Funding Available to Tribes)**
 - **Budget**
 - **Residual**
 - **IFF**

Eldred also discussed background information problems in regard to the tribal shares formulas.

Robert Scabby – Comment: He recommended training be afforded to tribes and that this would be very helpful.

Eldred discussed this and a discussion ensued re government time lines arbitrarily being set to handle various transactions and how they often take much more time than is feasible or necessary. These government deadlines were juxtaposed to direct tribal response turn around time lines, which are much more practical and actually are able to meet deadlines.

- **Due dates** need to be established . . . **by the need of the client** . . .
- **NOT** . . . arbitrarily set by the government since arbitrary government compliance due dates often are at variance with actual deadlines and at times misses deadline due dates entirely.

The appraisal MOU was discussed.

Tito Bass – Comment: He introduced himself and discussed that his land acreage should be higher. He brought up that outside community appraisals are considerably higher. Their region still has discrepancies on their appraisals.

Discussion ensued re criteria for formulas.

Recommendation: It was recommended Region and Self Governance be separated. It was also brought up that city tribes should not be dictating criteria for more rural tribes.

Eldred shared some insights in response to this. Education of users of their product as very important being emphasized.

Robert Scabby – Comment: The long amount of time it takes to get government responses was brought out and emphasized again. There are a lot of dynamics involved in government response.

Discussion ensued re land leases and base rentals were discussed along with percentages of the profits. Appraisal procedures were further discussed. for same.

- **Question from the floor: Subject: Home sites**
- Appraisals were discussed in relation as to **why** do we have to have an appraisal done if small land gift is planned?

Eldred's response – you **can** release property for less than fair market value. This needs to be reviewed re leasing situation. Appraised value can be **waived** by owner when given as a gift to another.

Discussion ensued from the floor.

Robert Scabby – Comment: Subject -Rights of Way There are lots of problems with compensation demands re water lines, telephone, etc., and the necessity to have to judiciously budget available monies so as not exhaust budget is an ongoing concern. This has become so problematical that it has started to hold back critical development and it threatens to bankrupt budgetary monies budgeted for same.

Eldred answered this concern. Tribal lands versus individual Indian lands was discussed re right of way easements that needs must go through properties. Regulations and interpreting same were discussed. It was noted that appraisals can be very expensive. Waiver Appraisals were discussed.

Robert Scabby – Infighting between the BIA and the OST is a real problem. Highest and best use to BIA may be based on a quite different criteria than the tribes carefully considered criteria for the highest and best use for lands. Golf course and stadium use of land versus other uses was discussed as examples and the wide financial differences in same were highlighted.

The cost of development versus return re appraisals was brought up and the cost of appraisals per se, which can be at times very complex and complicated which can result in their being very expensive was emphasized.

Frank shared that OAS can send packets of materials for use at the next Tribal Caucus meeting.

Robert Scabby shared that the Self Governance Tribes Internet Address is www.tribalselfgov.org If OAS has any questions or issues or comments you can PDF them to this web address and they will be disseminated immediately to all. It is a very active website with many participants

11:30 noon Session was adjourned for lunch by Eldred Lesansee

SESSION II (Repeat of Session I)

1:30 pm

Opening Remarks and Introductions – Frank Perniciaro

Frank Perniciaro welcomed all attendees and then shared the goal of the meeting.

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Peggy Doney – Question: Budgeting constraints were brought up . . . they will be discussed further on in presentation during question and answer sessions.

Eldred answered the question and expanded some on this concern. 2002 moved from bureau of Indian Affairs . . . the National Business Center took over the direction and they are now operating at a deficit. Budget cut to 8.6 million dollars. Running close to 2 million dollars in the red - just about the amount cut from their budget. They have requested a 2 million dollar addition and it has passed the U. S. House of Representative and is still pending in the U.S. Senate. Appraisal market analyses were discussed. Implementation of appraisal market analyses was discussed. Alternative evaluation methodology was discussed. Consultation services are available. Current dollar usage versus historical dollars was discussed.

Frank introduced the presentation. Eldred shared background material.

Slide Presentation on Tribal Shares Project – Presented by Frank Perniciaro and Eldred Lesansee

Eldred Lesannee took over the program and also welcomed everyone. He shared background information of the region-by-region formulas used to allocate tribal shares for the appraisal program.

Eldred then itemized the various Tribal consultations Meetings: Oklahoma City, June 30, 2009; Rapid City, South Dakota, July 14, 2009, Portland, Oregon, July 29, 2009, Billings, Montana, August 4, 2009, Anchorage, Alaska, August 13, 2009; Albuquerque, New Mexico, August 18, 2009.

Different motivations in different tribes. The customization of program to individual needs is important. Various considerations have been discovered as the meetings have been held and it has turned out to be far more complex that originally perceived.

Frank then began the slide show and he and Eldred together covered:

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John Allen - Question: Requested more information regarding this re the Rocky Mountain division.

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Benefits of Revising

- **Revised formulas will ensure uniformity and transparency in determining:**
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Statutes and Regulations (please see attached handout – 2 slides)

Instructions: You can substitute OST for BIA.

Residual (please see attached handout)

Justification for the residual is currently under study.

Administration comes out of the 20%.

Appraisal Process (please see attached handout)

- Appraisal Request (subject to approval by BIA Line Official)
- Appraisal Report (funded by Residual)
- Appraisal Review and Approval (IFF) (end of process)
- Transmit Product to Client

John Allen – Comment: There are problems with past appraisals that don't encompass ancillary costs.

Frank addressed the fact that adequate monies must be available so that bottlenecks won't occur.

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Idea 2 – Equal Division (please see attached handout)

(financial breakdown for Fiscal Years 2006, 2007, 2008)

John Allen – Question: The Rocky Boy Tribe owns all their land. Who would handle their appraisals. Do they have a need? Inequity factor was discussed re this Idea.

Frank and Eldred shared that the Rocky Boy Tribe need was minimal. Discussion ensued. Equal division then could be a problem for others.

Peggy Dole – Question: Re budgeting concerns – responsibility for allotments was discussed.

Idea 3: Land-based (please see attached handout)

(financial breakdown re acres and percentages)

John Allen – Comment: Appraisers are chosen for them. Appraisals are at time very off. Appraisers are approved by Appraisal Office. Tribe would rather hire appraisers from their areas who understand their land areas. The appraisals are often way off from the reality of the land usage.

Eldred shared that highest best use should be base for appraisals. Road access is important when appraising. Demand for recreational use, for example, is also supposed to be taken into consideration. Supply and demand economics of land appraisals are essential components to realistic appraisals.

Peggy Doney – Comment: Economy and unemployment is a strong motivating factor in sale of land and sale to non-Indian buyer is a real concern for tribes. A lot of foreclosures are going on at this present time and this is a very big issue at this time. Ongoing land exchanges are also a big issue.

Eldred spoke to this issue and the coordination need up front in an active real estate market. An appraisal's shelf life is dependent on market. Check the [Appraisal Policy Manual](#) as to whether an appraisal is still effective.

Appraisal expirations were discussed.

Eldred shared that there is **no** administratively determined shelf life in force at present time. Administrative policies do not demonstrate what is happening in the market at any given time.

Recommendation by John Allen: Training clearly needs to be done by Federal government for all offices re appraisal expirations and shelf life of same. It is clear that there are diverse points of view re this in offices.

Idea 4: Population-based (please see attached handout)
(financial breakdown re tribal members and percentages)

Idea 5: Hybrid formula (weighted components) (please see attached handout)
(financial breakdown re land, population, workload, total weight)

Title IV funding Sources (please see attached handout)

- Most of the tribes now compacting the appraisal program receive base funding from OSG.
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Frank mentions that the Self Governance tribes will not lose money.

Eldred charted on the flip chart that they have OST and TPA funding if that is what the formula indicates.

Thank You (please see attached handout)

Addresses and telephone numbers are in provided inn the handout for questions, comments and suggestions from attendees, along with team members and their areas of responsibility/titles.

Before August 13th the comments would need to be in so that they can carry the comments on to their Alaska presentation.

GENERAL DISCUSSION – Eldred Lesansee and Frank Perniciaro Facilitators

Peggy Doney – Question: Would it be possible to have a certified appraiser assigned to each reservation.

Eldred said the budgeting constraints are problematical right now to cover such a request. The Obama administration has mandated that all programs must be cut by 2% and this is a serious problem for this program.

Peggy Doney – Question: Arvil Hale’s approach and methodology is cost effective, however his reports were not accepted by the regional office.

Discussion ensued re development of appraisals and tools available for same. Arvil Hale’s approach was approved in the Northwest sector of the United States.

John Allen – Question: Why are there so few appraisers? The delays can be for a year to twenty years. It’s a very slow process. The local appraisers are very timely. This is a real problem. And the appraisers are significantly higher in setting their fees for tribal lands. Economics are very bad. There is a definite regression to non-Indians utilizing the land rather than Indians.

Eldred shared that the qualification requirements have been increased considerably for certification. Lack of competition is a problem to keeping a competitive market re appraiser vendors. The list of approved appraisers needs to be expanded.

Roxanne Poupart – Comment: The tribes can expand their own lists of appraisers.

Eldred discussed quality control re appraisals and qualifications necessary for government appraisers.

Discussion ensued re low population versus high appraisals which results in no possibility of sale of land.

Yellow book standards were discussed. Cost of appraisals go up each year.

John Allen – Comment: What is our next step?

Frank left auditorium to make phone call to get budgeted amount for the tribe asking for their budgeted amount in order to facilitate answering this question.

Robert Scabby – Comment: Would like Excel spreadsheet re formulas.

He also shared that the Self Governance Tribes Internet Address is www.tribalselfgov.org If OAS has any questions or issues or comments the government can PDF them at this web address and they will be disseminated the information immediately to all. It is a very efficient active website with many participants.

Eldred discussed justifications for annual rates. He will send information to Robert Scabby re tribal shares allocation formula.

Frank’s answer re budget allocation: 1,153,000,608 for Rocky Mountain Region is budget allocation.

Eldred shared that the BIA has a website which has a considerable amount of statistics re tribal enrollments.

John Allen – Comment: That the census numbers are nine years out of date so this data is inaccurate to the extreme.

Self Governance Minimum Data Report is put out by the Self Governance tribes. This is submitted to Congress. It is loaded with data. Excellent central data source.

Peggy Doney – Comment: Peggy discussed out off reservation Indian appraisal reports administration. Responsibility to provide services and prohibitive cost of market research projects was discussed. Turtle Mountain tracts and appraisals were discussed in particular.

Roxanne Poupart – Comment: Some appraisals are specific for intended use.

Robert Scabby – Comment: Discussed economic development and the “nuts and bolts” of appraisals and urban leases. Comparables in Scottsdale were discussed which can run into the hundreds of thousands of dollars. Freeway went through and freeway appraisal was over 200 million dollars. Leases are huge negotiations.

Scottsdale has been very lucrative for the reservations.

John Allen – Comment: Discussion ensued re urban relocation program and the problems that have incurred with absentee landlords. A lot of land deals fall by the wayside because of asking prices.

Indians traditionally are buried on reservation land. Many of the reservations have a great deal of land but are shy of people.

4:30 pm Session adjourned by Eldred Lesansee

Respectfully Submitted,

 08/04/09

Mary C. McMurchie
Spherion Employment Agency
Billings, Montana

Attachment: Agenda Handout

