



## Appraisals are at the heart of federal trust responsibility

**N**early every land transaction in Indian Country requires an appraisal, one of the most basic functions in the federal government's ability to carry out its trust responsibilities. Indeed, the trust relationship was established so that tribes and Indian people would be assured of receiving "fair market value" for any transaction involving their assets held in trust. In spite of the many challenges involved, this cannot become an afterthought.

That's why the Indian Land Tenure Foundation has dedicated this issue of the *Message Runner* to the subject of appraisals. The publication covers the basics of appraisals and market value, the ins and outs of appraising Indian land, and other helpful information for individual Indian landowners. We trust you will find it to be a valuable resource.

### A long, slow process

When most Americans buy a house or a piece of land, the appraisal takes a few days. An appraisal of Indian land, however, can take months to be completed and approved by the Department of the Interior (DOI). The graphic on pages 6 and 7 provides an overview of the process, including anticipated times for each step. Even the most optimistic outlook adds up to at least three months.

That may change, however, thanks to the Indian Trust Asset Reform Act (ITARA) of 2016. ITARA is the first comprehensive trust reform bill to clear Congress in more than 20 years, and is intended to make it easier for tribes and individual Indians to manage their trust assets. The bill contains potentially significant changes to the appraisal process. ITARA requires that all appraisals and valuations of Indian trust property be administered by a single entity within the DOI. It's unclear yet what that means. Perhaps more importantly, ITARA offers landowners the opportunity to skip the review/approval process altogether if three conditions are met:

- ▶ The appraisal is completed by a "minimally qualified appraiser."
- ▶ The tribe or individual Indian landowners involved waive DOI review.
- ▶ No owner of any interest in the property objects.

The key phrase is "minimally qualified appraiser," which has been defined as a Certified General Appraiser holding a license in good standing from the state where the property is located, and complying with the Uniform Standards of Professional Appraisal Practice (USPAP). Appraisers will simply have to submit their professional qualifications and licensing documents with each appraisal.

Please note: ITARA exempts appraisals conducted under the Land Buy-Back Program for Tribal Nations, and the purchase-at-probate



*Having the ability to waive the review process could have far-reaching implications for Native nations.*

provisions of the American Indian Probate Reform Act (AIPRA) of 2004. These appraisals follow prior standards.

### What lies ahead?

Having the ability to waive the review process could have far-reaching implications for tribes and individual Indian landowners. Although the goal of ITARA is pretty clear — to speed up the appraisal process — it is not obvious what the actual impact will be. The key requirement is this: Every allottee who has an interest in the allotment has to sign the waiver. It's not hard to imagine how difficult that might be!

The primary benefit will likely be to tribes that own property without co-owners. They will now be able to take advantage of a streamlined appraisal process on land for commercial purposes. Currently, many economically important tribal projects suffer from interminable delays that result in the loss of time-sensitive business and development opportunities. Waiving the review process could save months of waiting, which is good news for Indian Country.

### A federal obligation

One issue that has not been addressed is the looming appraiser shortage. This issue is examined in detail in ILTF's *Message Runner*, volume 7, which explores career opportunities in tribal land. The average age of appraisers in Indian Country is estimated to be over 60, and there are few individuals joining the profession. The reasons are many, but the most significant barrier is the stringent — some would say unrealistic — licensing requirements.

Meanwhile, the U.S. government continues to starve the Office of Appraisal Services (OAS) of resources, and there simply aren't enough staff appraisers to do the work. This is unacceptable. The federal government must fulfill its trust obligations to Indian people regardless of economic or political circumstances. After all, that responsibility doesn't come with an asterisk that says, "if we have enough money in the budget." Indian people have too much at stake to settle for an appraisal process that fails to meet those obligations.



Cris Stainbrook, President  
Indian Land Tenure Foundation



# Appraisals 101: The nuts and bolts of valuing land

**R**eal estate appraisal (sometimes called ‘land valuation’) is the process of developing an opinion of value for real property. Most people are familiar with the concept of appraisal but know far less about the principles and process behind it. This edition of the *Message Runner* is intended to provide a broad overview of the appraisal process for Indian land. To do that, however, it is important to first grasp the basics of appraisal in general.

“One of the things you learn as an appraiser is that everybody thinks they are an expert,” said Robert Grijalva, former Senior Review Appraiser with the Office of Appraisal Services (OAS) in Arizona. “I always ask the landowner what they think their property is worth, and then I ask them why. You learn a lot of things about the property when you get into that kind of discussion.”

Such conversations are just the beginning of the appraisal process.

### Purpose of an Appraisal

An appraisal is a professional’s estimate of value. It is essentially an opinion that is based on extensive research, verifiable data and a well-established process. In most cases, the purpose of the appraisal is to determine ‘market value’ — the price a property is likely to sell for. (For more on market value, see page 3)

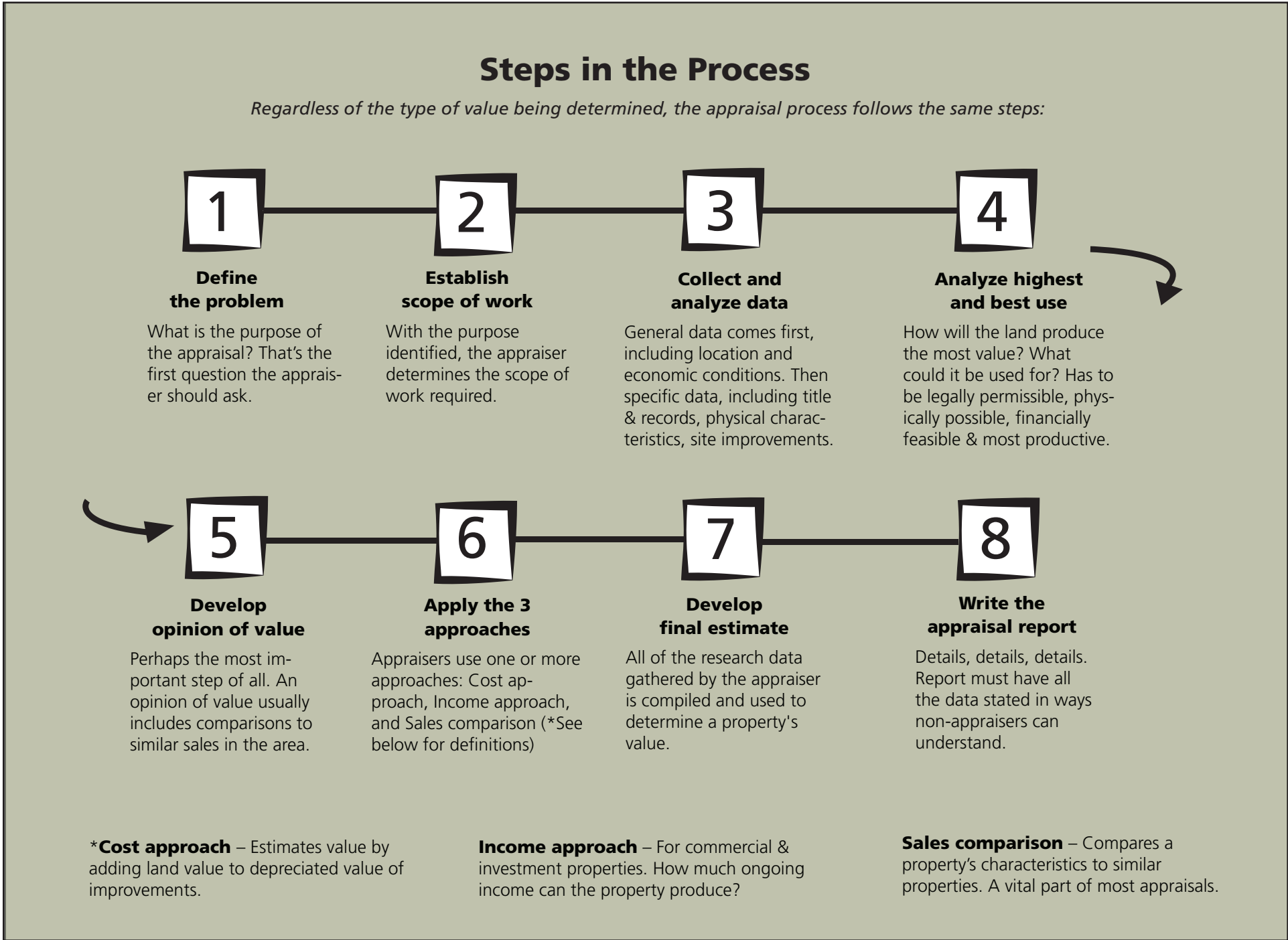
“The appraiser’s purpose is pretty straightforward: to provide an unbiased appraisal of the value of the property and to document how he arrived at that value,” said Dave Baker, former Great Plains regional appraiser for the Bureau of Indian Affairs in Rapid City, S.D. “The process is changing, particularly for Indian land, but the basics are



*An appraisal is a professional opinion based on research, verifiable data, and a well-established process.*

- still the same: You need the data so that your appraisal will stand up in court.”
- The purpose of the appraisal determines what type of value the appraiser is looking for, including:
- ▶ **Market value** — What a buyer will pay and a seller will likely accept in an open market.
  - ▶ **Value in use** — Value to a particular land owner depending on how the land is used.
  - ▶ **Investment value** — Value to a specific buyer at a particular time.

- ▶ **Insurable value** — Value as covered by an insurance policy.
  - ▶ **Liquidation value** — Commonly used in bankruptcy proceedings. Assumes seller has to sell.
- "The important thing is to gather all of the data you can, and use the best techniques for analyzing that data," said Arvel Hale, former Chief Appraiser for the BIA in Washington, D.C. "Whatever your preconceived ideas are about the value of a property, you need to set those aside. You have to let the data and your analysis lead you to the right conclusion."





# Q: What is market value? A: Not the same as sale price

The appraisal process is supposed to determine the ‘market value’ of a particular piece of land, but what exactly is market value? The definition is simple enough: The most probable price that a property will sell for, on the date of appraisal, allowing for a reasonable time to find a willing and informed buyer.

The reality is much more complex. “The thing is, valuation is based on perception, and everybody’s perception is a little different,” said Arvel Hale, former Chief Appraiser for the Bureau of Indian Affairs (BIA) in Washington, D.C. "Appraisal is probably as much about people as it is about dirt and bricks. The biggest part is how people perceive the situation and what are they willing to pay or accept as payment.”

There are many different types of value:

- ▶ **Assessed value** — As determined by governments for taxation
- ▶ **Going-concern value** — Part of an ongoing business such as an auto repair shop or laundromat
- ▶ **Liquidation value** — Used in a bankruptcy. Assumes that the business will no longer be operating on the land.
- ▶ **Insurable value** — As covered by an insurance policy. Generally applies to structures but not the land itself.
- ▶ **Investment value** — As an asset to investors

### Like forecasting the weather

Hale's approach is to use objective information that influences the way people make decisions, and correlate that with the selling prices of comparable properties in the area. Appraisers are essentially trying to predict what most buyers would pay for the same property. “Appraisal is about probability. Once you understand this,” he said, “then it starts to make sense.”

In reality, determining market value is somewhat like forecasting the weather. Although appraisers use the same basic approach, no two do it exactly the same way. It's sort of like having three meteorologists predicting the weather using different software models. None of the forecasters is likely to be spot on, but their forecasts will probably be similar. When it rains unexpectedly on your picnic, however, you aren't going to be happy. Same thing with an appraisal.



Appraisers are essentially trying to predict what most well-informed buyers would pay for the same property.

### Valuing fractionated land

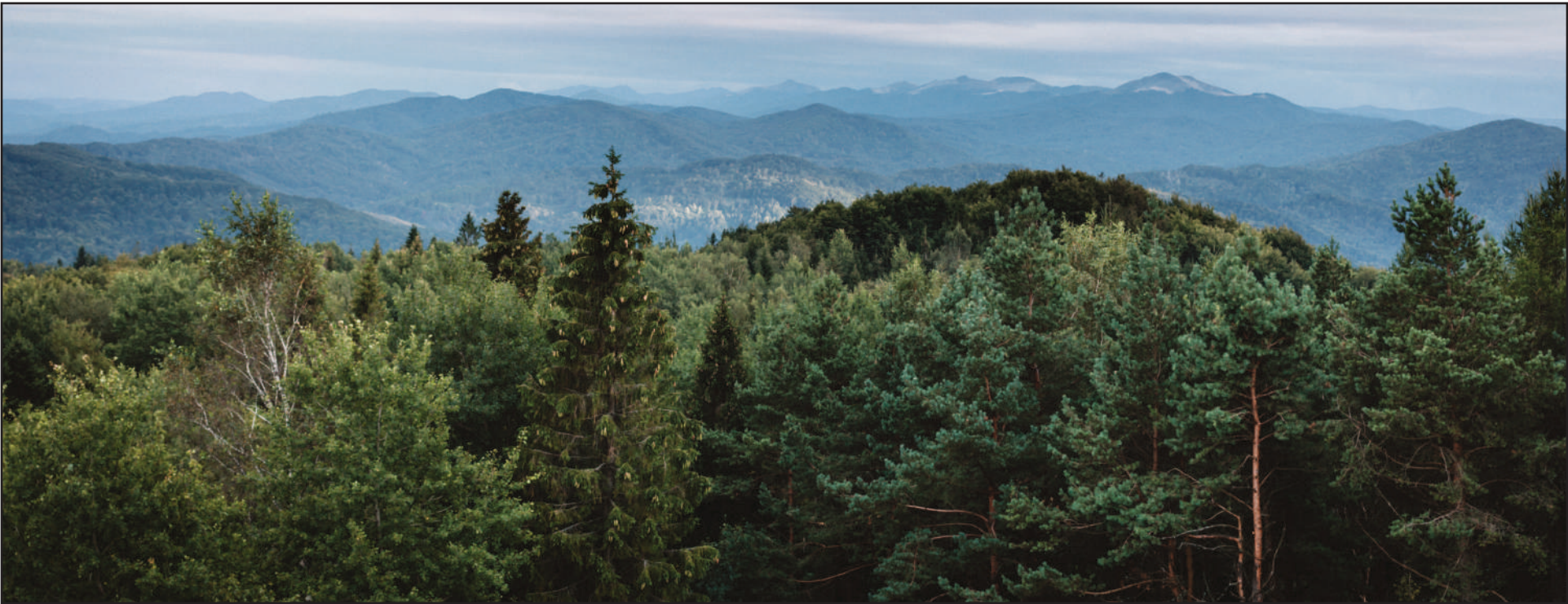
Indian landowners are often disappointed when the appraised value of their interest is lower than what they had anticipated, and many believe that fractionated land is being unfairly devalued by the Office of Appraisal Services (OAS). In fact, the value is impacted because the use of Indian land is much more restricted, and the owner of an interest has limited rights compared to property that is controlled by one person.

"You don't have the ability to use, sell or lease the land without the consent of the other owners," Hale explained. "A more reasoned approach is to use the income approach and estimate the value of the benefits associated with the fractional interest — the anticipated cash flow from rental income, for example."

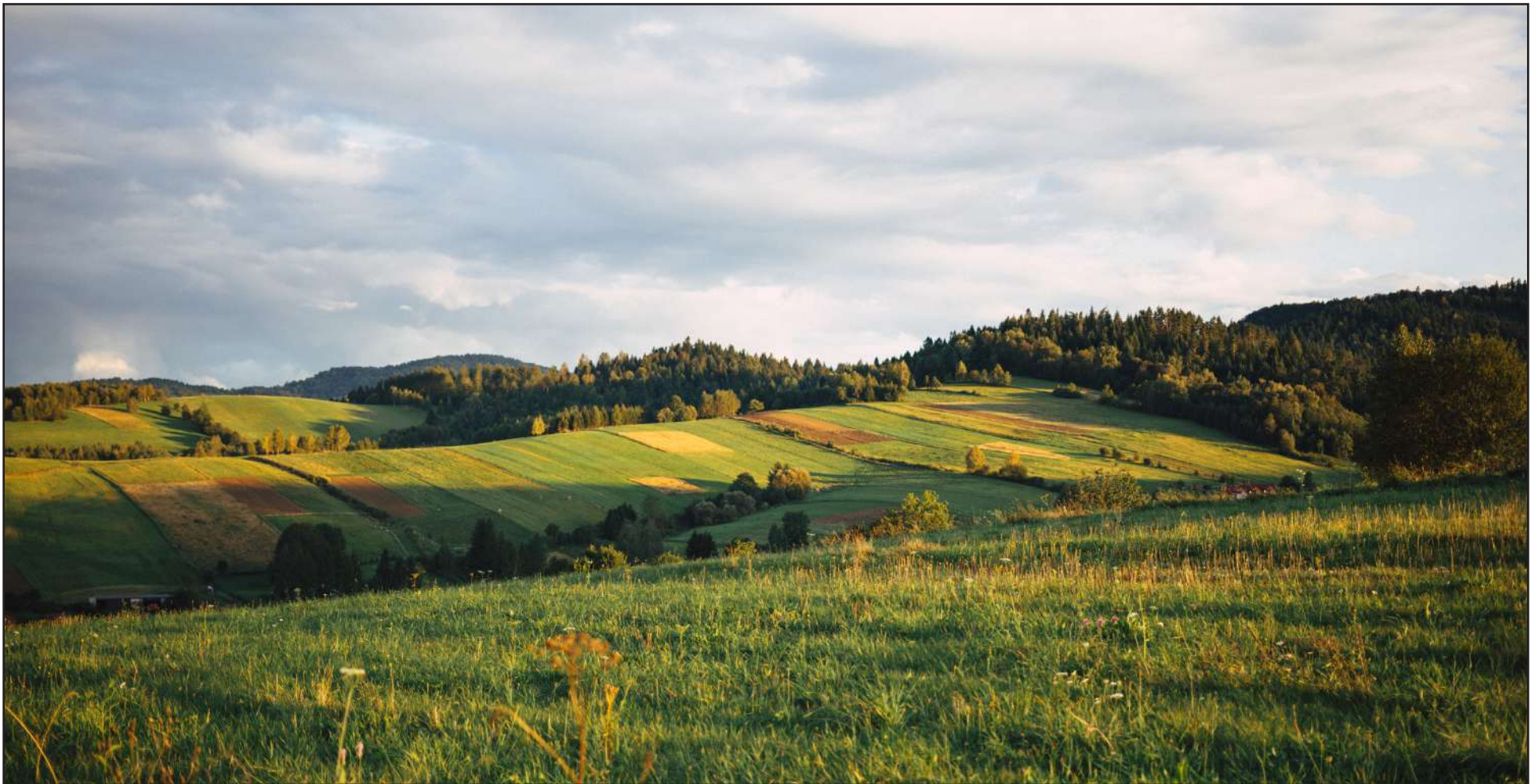
Robert Grijalva, former Senior Review Appraiser with OAS, says there is one vitally important

fact that landowners need to remember: Market value is not the same as the selling price. "Your inability to do what you want with your portion of that land will not actually affect the value of the land," Grijalva said. "What it will affect is the price of the land. The value may be there but you may not be able to sell it for that."

This is not an issue that is unique to Indian land. It applies to other real estate situations, such as ownership in a condominium or timeshare, or a commercial property owned by a group of investors. No single investor can decide how that property will be used, which makes it more challenging to sell. Other factors come into play, as well. For example, if someone owns two weeks at a timeshare in January in Phoenix, that will sell for a lot more than that same unit is worth for use in July when few northerners want to vacation in 120-degree weather.







Appraisals are used to determine fair-market value for trust land and resources, but it can take months to receive a final report from the Office of Appraisal Services.

## Hurry up and wait: The realities of Indian land appraisals

The average home buyer in America can get an appraisal done in less time than it takes to read the Department of the Interior’s description of the process for appraising Indian land. Indian landowners often wait a year or more from the time an appraisal request is submitted to the local Bureau of Indian Affairs (BIA) office, the appraisal is conducted by the Office of Appraisal Services (OAS) and the final report is received from the Office of the Special Trustee for American Indians (OST). Outlined below are the realities of appraising Indian land.

### The basics

A real estate appraisal or land valuation is the process of developing an opinion of value for a piece of property. In Indian Country, appraisals are used to determine the fair market value for Indian trust land and resources. All appraisals must be reviewed and approved by OAS. While requirements will vary by region, appraisals are generally needed for Indian land sales, land exchanges, land consolidations, rights-of-way and agricultural leases. Appraisals for gift deeds can be waived. (See story on page 5).

It’s important to note that an appraisal of value does not determine the selling price,

as landowners can negotiate for more than the appraised value. In most cases, however, the landowner sells for the appraised value, especially when the tribe is the buyer.

The appraisal is done on the entire allotment. The value of the undivided interest of each landowner is calculated on the percentage of interest held. For example, if the value of an entire 160-acre allotment is \$10,000 and an individual’s ownership interest is 1/10, the appraised value of his or her land would be \$1,000.

### Steps in the process

The local BIA realty office or tribal land office begins the process by sending an appraisal request to OAS. The request identifies specific items to be addressed in the appraisal, such as the type of transaction and property type (e.g., agricultural, residential, commercial or industrial). If there are no problems with the request, OAS will prepare a Statement of Work and forward it to a staff appraiser or an independent contractor. Once a contract is awarded, the appraiser has 90 days to complete the work and submit the appraisal report to OAS for review.

Appraisals of Indian land must be completed by a Certified General Appraiser who follows the Uniform Standards of Professional Appraisal Practice (USPAP). The content of each appraisal varies based on the location, type of property, condition of existing structures, and the value of comparable properties in the area.

In some instances, the landowner will receive a letter indicating the final estimated value while others will get the complete report. Either way, the landowner always has the right to review the full appraisal upon request. In general, an appraisal is valid for one year depending on how fast land values are changing.

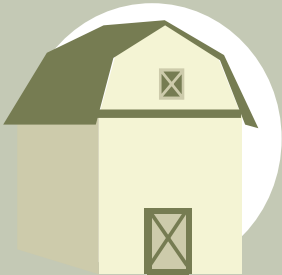
### How long does it take?

The actual time it takes to do the appraisal is relatively short, according to Robert Grijalva, former OAS Senior Review Appraiser in Arizona. “It takes about a week to look at the property and a week to research the comparable sales,” he said. “It should take about a week to review the appraisal and get it approved. That’s less than 30 days which sounds pretty good, doesn’t it?”

*Continued on page 5*

*"Landowners often wait a year or more for an appraisal."*

## Are buildings included in the appraisal?



Off the reservation, land appraisals almost always include the value of the buildings on the property. On Indian land, however, buildings are not normally included because they are no longer considered trust assets.

“When I worked for the Bureau of Indian Affairs, there were times when we did appraise the buildings,” said Dave Baker, former regional appraiser for the BIA in Rapid City, S.D. “These were usually cases where there was only one owner, and they were selling the property and the buildings. It didn’t happen very often.”





*It can take months for landowners to get an appraisal, but buildings are rarely included in the valuation.*

*Continued from page 4*

In reality, it can take months to complete the process. “When I arrived at OAS, there were probably 2,500 to 3,000 appraisals sitting on someone’s desk waiting to be reviewed,” Grijalva said.

Some regions have awarded multi-year contracts to appraisers to eliminate the need to advertise, review and award a separate contract for each appraisal. Recently, more drastic steps have been taken to reduce the backlog according to David Baker, former Great Plains regional appraiser for the BIA in Rapid City, S.D.

Then there is the ever-present human element, and personalities can play a significant role in the time frames and outcomes. “This isn’t a machine where you can write code and anticipate that everything is going to work,” said Arvel Hale, former Chief Appraiser for the BIA in Washington, D.C. “It all depends on who the landowner is dealing with.”

**Who pays for an appraisal?**

All appraisals of Indian trust land are paid for by the BIA, even if the cost of the appraisal is greater than the value of the land. The only exception is right-of-way appraisals, which are paid for the by the party making the request. In some cases, the landowner — most often a tribe — will hire a private appraiser but the appraisal still has to be reviewed and approved by OST.

## Appraisals not required for gift deeds



*Gift deeds enable individual Indian landowners to give their undivided interest to other family members.*

**G**ift deeds enable Indian landowners to transfer property from one person to another without having to write a will or exchange money. This allows landowners to give their undivided interests to their relatives, and prevents the interests from being further divided. The law requires that the person doing the gift deed be given an estimate of value on their interests.

In a recent change, however, this valuation requirement can now be waived when the gift is conveyed to close family or extended relatives. The Indian landowner who is conveying by gift deed with an Indian person who is the owner’s spouse, brother, sister, lineal ancestor of Indian blood, lineal descendant, or collateral heir can now waive the valuation requirement in writing.

This change is concerning to David Baker. The former regional appraiser for the Bureau of Indian Affairs (BIA) in Rapid City, S.D. believes the Bureau is now neglecting its fiduciary trust responsibility. "If someone wants to do a gift deed, the BIA should be obligated to provide some kind of valuation of the property being given away," he said.

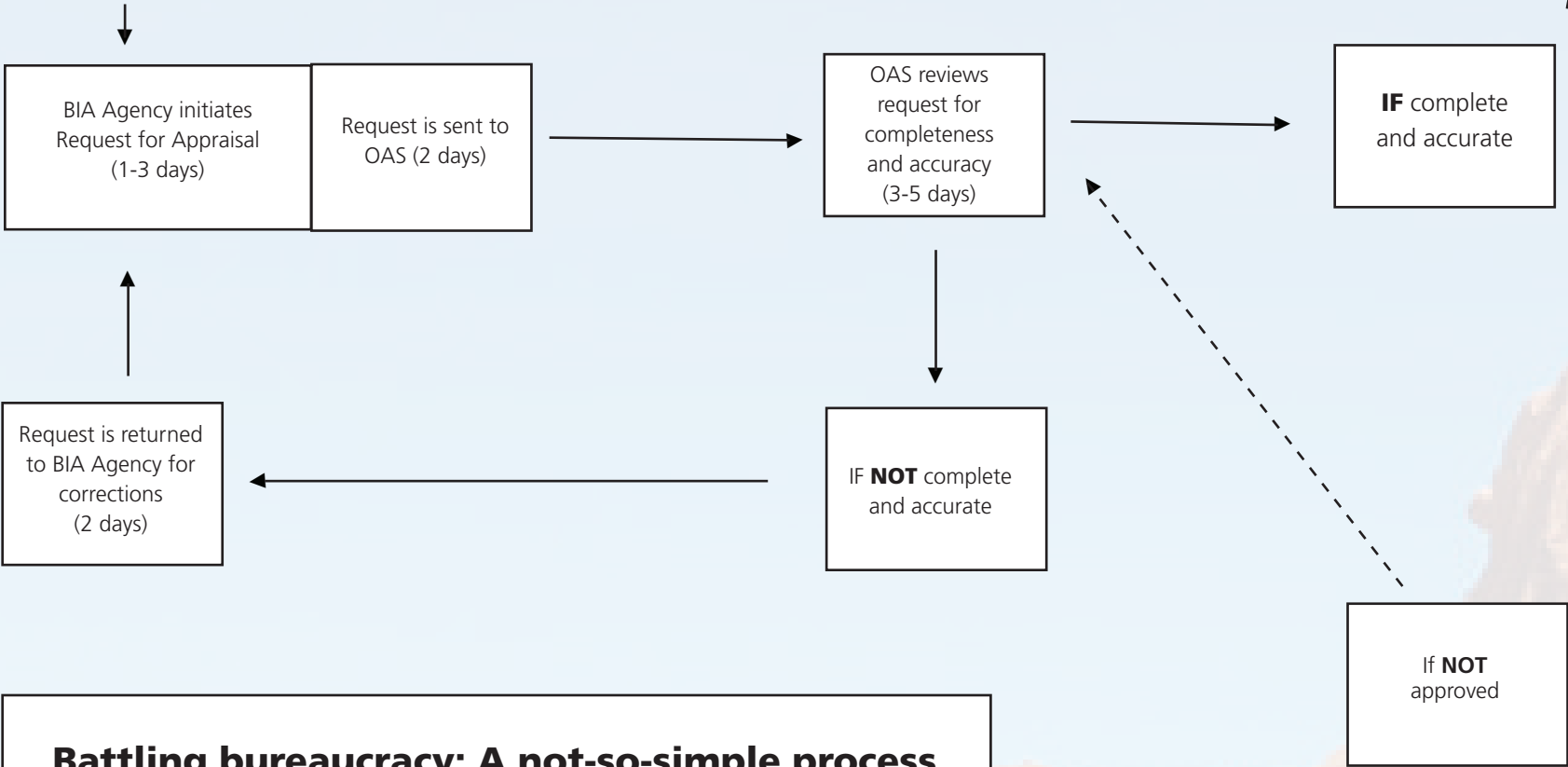
Baker's concern is that individual Indian landowners may have no idea what their land is actually worth, and might be taken advantage of as a result. "We used to provide a market study for every reservation that established the basic value of different types of land. Grassland, for example might be \$300 an acre," he explained. "If your property was 10 acres of grassland you knew it was worth about \$3,000. People would change their mind at times about doing the gift deed once they knew what the property was worth. Now they don't have that opportunity."

*"Valuation requirements can now be waived."*



# Appraisal Process for Indian Land

Begin here



## Battling bureaucracy: A not-so-simple process

When the average person buys a house, getting an appraisal done is a relatively simple process that normally takes about seven days. Having a piece of Indian land appraised is never straightforward, and it can take months. This graphic is a best effort to illustrate that process, including the official time estimates for each step.

From the day a tribe or individual Indian landowner submits a request to a Bureau of Indian Affairs (BIA) Agency until the landowner receives the final report from the Office of Appraisal Services (OAS), it normally takes at least three months. More often, the time frame is much longer.

The two primary choke points are delays in assigning the job to an appraiser – either an OAS employee or outside contractor – and at the OAS appraisal review. The backlog varies greatly by location. Severe winter weather can be a factor (e.g., in Alaska) but in most cases delays are driven by staffing issues. "The appraisal request can sit in somebody's 'In' box for an eternity without even being logged into the system," said Robert Grijalva, former OAS Senior Review Appraiser in Arizona. "That's why the actual time it takes to get an appraisal done is much longer than the officially reported delays."

By law, appraisals involving a right-of-way are supposed to be completed within 60 days, a deadline that is routinely missed. If the land in question is tribally owned, and the project involves an influential entity such as an oil or power company, pressure is often exerted on OAS to move things along. This just adds to the delays faced by individual Indian landowners.

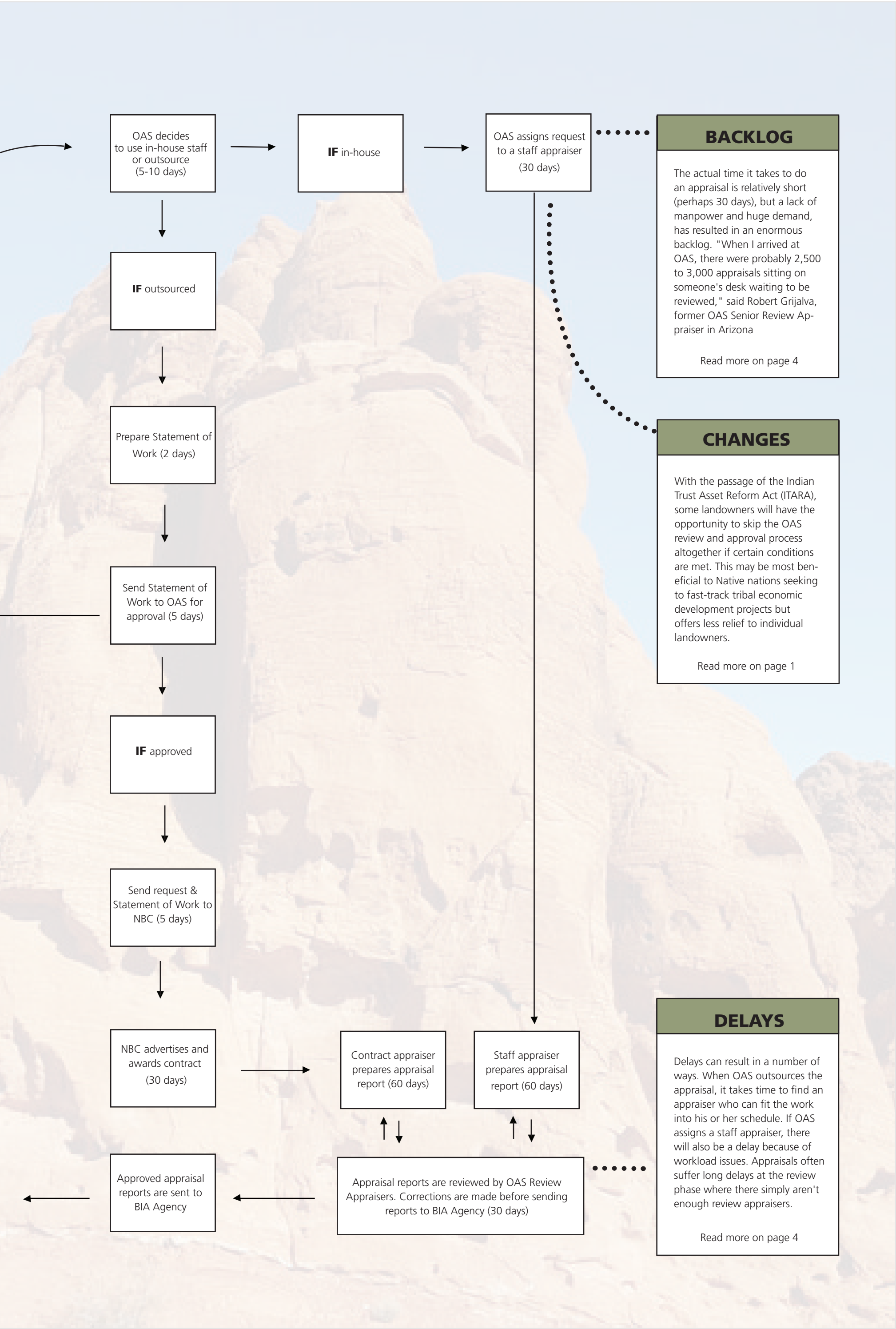
## APPEALS

Landowners should read the appraisal report carefully to be sure it is thorough, accurate and mathematically correct. If not, landowners should appeal to the BIA Agency Superintendent and be prepared to appeal his ruling to the Regional Director if necessary. Filing a complaint with the state appraisal board is an option, too.

Read more on page 11

**Key**  
BIA = BUREAU OF INDIAN AFFAIRS  
OAS = OFFICE OF APPRAISAL SERVICE  
NBC = NATIONAL BUSINESS CENTER

Appeals





# Appraising Indian land for a right-of-way or easement

Ever since the General Allotment Act of 1887 transferred the title and oversight of all reservation land to the U.S. government, thousands of rights-of-way have been granted across Indian land for roads, pipelines, power lines, railroad tracks and other uses. Every time a company, individual or government (the ‘acquiring party’) requests an easement, there needs to be an appraisal done to determine the value of the land in question.

“Appraising an easement or right-of-way is about ‘rights taken.’ It’s about the value the landowner is losing as a result of the road or pipeline crossing his property,” said Robert Grijalva, former Senior Review Appraiser for the Office of Appraisal Services (OAS) in Arizona. “The landowner needs to know what that land is worth so they can negotiate with the organization seeking the easement.”

### Appraised value is vital

Permissions granted range from perpetual easements for transportation or communication routes to short-term rights for construction projects. Some rights-of-way affect one allotment or parcel of tribal land while others cross hundreds of allotments and involve thousands of individual Indian landowners, including tribes.

“I know of one Indian landowner on the Fort Berthold Reservation (North Dakota) who has 13 different pipelines running across his land,” said David Baker, former regional appraiser for the Bureau of Indian Affairs (BIA) in Rapid City, S.D.

When an appraisal request is filed, landowners are notified and asked for permission to enter the land for survey, mapping, and appraisal purposes. The requesting organization has to pay for the appraisal.

### 'Just compensation'

Once the appraisal is complete, the landowners receive an offer, which many accept without negotiation. Other landowners recognize the importance of the information in the appraisal and use it to negotiate more favorable terms. If the party requesting the easement is going to make a lot of money as a result of having access to that property — in the case of a natural gas line, for example — the landowner has every right to negotiate a fair payment that could be higher than the appraised value.

Payment might include 'just compensation' or 'severance damages' to the property owner.



*Rights-of-way or easements are required for a variety of uses, including power lines, roads, pipelines, and railroad tracks. Every allotment that is to be crossed needs a separate appraisal, and all appraisals are paid for by the requesting organization.*

'Just compensation' is the difference between the value of the entire property before the land was taken for the easement and the value of the remainder afterwards. 'Severance damages' are the financial impacts to the remainder of the land.

“If I put a 50-foot wide canal across the middle of your property, I have cut your property in half and significantly impacted your use of that land,” Grijalva said. "You should be compensated for that."

**Easement:** A legal right given to a person or organization to use someone else’s land for a specific purpose.

**Right-of-way:** A type of easement that allows access to cross a landowner’s property.





# Placing a fair value on Indian timberland



The market value of harvested trees is often several times greater than the value of the land itself.

When an appraisal is done on Indian land, a value is assigned not only for the surface and possibly for the sub-surface rights but also for economic assets that grow out of the ground — the trees. Timber is subject to appraisal in the same way as minerals,

and the market value of harvested trees is often several times greater than the land itself. In Indian Country, the responsibility for appraising timber belongs to the forestry division of the Bureau of Indian Affairs (BIA), which relays its findings to the Office of Appraisal Services. Timber resources

are valued based upon BIA regional policies, procedures and standards.

The first step in the appraisal process is a 'timber cruise' to help determine the market value of the trees. This is essentially the process of taking inventory. Until the appraiser knows the volume of timber on a property (usually expressed in tons, cords, board feet or cubic feet), he cannot know the value.

A complete forest inventory provides estimates of area, description of topography, ownership, accessibility, transportation facilities, estimates of timber quantity and quality, and estimates of growth and 'drain' (the removal of trees).

The appraiser has to answer several questions to determine the value:

- ▶ Are the resources accessible?
- ▶ Is it culturally permissible to harvest the trees?
- ▶ Is the harvest environmentally feasible?

Assuming the answer to these questions is 'yes,' the appraiser needs to determine if it is economically viable to harvest the timber. The strength of the overall timber market is constantly changing due to supply and demand, and value can be affected by many factors, including the impact of weather.

# Appraising the value of mineral rights



Appraisers determine what the economic value of sub-surface assets will be once the minerals are extracted.

When it comes to appraising Indian land, the process involves more than just what meets the eye. Sub-surface rights — the rights to the earth below the land and any substances found there — are also an important component of land ownership. These include the mineral rights, which are the rights to explore and produce the rocks, minerals, oil and gas found below the surface. The tribe may own the mineral resources on trust land, including gas and oil, but that isn't always the case.

“Most appraisals deal only with the surface. Mineral rights are a whole different thing,” said Robert Grijalva, former Senior Review Appraiser for the Office of Appraisal Services (OAS). “The history behind mineral rights in the U.S. is interesting, but it can cause some difficult situations for landowners. I might own the land but someone else owns the mineral rights, or the rights to any oil or gas that’s down there. By law they can come in and start digging on my property and there’s not much I can do about it.”

The responsibility for appraising minerals on Indian land falls to the Division of Minerals Evaluation (DME), which is part of the U.S. Department of the Interior’s Office of Valuation Services. DME is charged with providing unbiased information through mineral assessments and market analyses. The challenge is to determine what is under the ground, whether it is economically viable to remove it, and what market value it has once removed.

The appraisal process involves the expertise of many different professionals who use Geographic Information Systems (GIS) data, mineral markets information, geologic data, field testing, and mineral economics to appraise value. These include geologists, mineral economists, and engineers whose first job is to determine if there are minerals in the ground. Once that is established, the appraiser will determine how feasible it is to develop those minerals and what risks are involved. Finally, a determination is made on the economic value of the minerals once they are extracted from the ground.

"By law they can come in and start digging on my property."



# Land Buy-Back Program is using mass-appraisals approach

When Indian landowners receive purchase offer from the Land Buy-Back Program for Tribal Nations (LBBP), the price is based on a valuation conducted by the Office of Appraisal Services (OAS). The way OAS arrives at the appraised value, however, is different from standard appraisals. Because the LBBP is putting a value on more than 93,500 tracts on approximately 150 reservations, it isn't practical to appraise each property individually. Instead, the Program uses a "mass appraisals" approach, which can greatly impact what landowners are offered for their interests.

The Land Buy-Back Program was established to reduce the number of fractional interests on Indian land. It was created to implement the Indian land consolidation component of the Cobell Settlement, which provided a \$1.9 billion fund to purchase fractional interests from willing sellers over a 10-year-period.

When a landowner sells a fractional interest, the tribe with jurisdiction is given ownership and the land remains in trust. OAS conducts the appraisal to ensure that Indian landowners receive fair market value for their interests. The question is, do mass appraisals generate accurate values?

### Lack of consistency

Standard appraisals outside of the LBBP are conducted under guidelines established in the Uniform Standards of Professional Appraisal Practice (USPAP). These apply to the vast majority of appraisals in the United States, including those on Indian land. Appraisals in the LBBP are different although the process being used was reviewed and approved by The Appraisal Foundation, the nonprofit organization that sets Congressionally-authorized standards and qualifications for appraisers.

Rather than the usual detailed analysis, mass appraisals rely heavily on mapping and the use of Geographic Information Systems (GIS) data. OAS appraisers use existing information from the Public Land Survey System (PLSS), Bureau of Land Management (BLM), and the Trust Asset and Accounting Management System (TAAMS) to define and categorize the tracts. Appraisers in the Land Buy-Back Program rarely set foot on the ground.



The Land Buy-Back Program is putting a value on 93,500 tracts of land on approximately 150 reservations.

The LBBP insists that mass appraisals reduce the cost of implementing the Program, expedite the appraisal process, and facilitate the greatest number of offers to individual Indian landowners. A small number of individual or site-specific appraisals are done on tracts where mass appraisal is not possible.

Some independent appraisers aren't convinced that the LBBP's numbers are accurate.

"The problem with the LBBP's sales database is that few of the sales were verified with a party that was knowledgeable of the terms and conditions of the sale, or were field inspected," said Dave Baker, who has been appraising Indian land in the Great Plains region since the 1970s. "Some of the data they are using is more than 10 years old."

### Inflated land values

The mass-appraisal approach has resulted in unintended consequences for individual Indian landowners and tribes. In certain areas, LBBP has purchased land for a much higher price than the prevailing market. This has impacted land sales

in general. For example, Baker said, the LBBP has paid around \$1,200 an acre for grassland on the Cheyenne River and Standing Rock reservations. "The actual value of land there was about \$700 to \$800 an acre," he said. "The tribes went along with the higher number because it put more money in people's pockets."

As a result, however, landowner expectations have risen to unrealistic levels. At Standing Rock, Baker said, the Tribe used to buy a lot of fee land, but that activity has been curtailed because landowners want to be paid at the inflated value established by the Program. "Obviously, a tribe isn't going to pay 50 percent over actual market value," said Baker.

When Baker is solicited to do a private appraisal on Indian land, he now offers landowners a word of caution. "I tell them, 'If you expect me to come up with a value like what the Land Buy-Back Program is paying, then you had better find another appraiser,'" he said, "because I'm not going to be anywhere near that number."

*"Program appraisers rarely set foot on the ground."*

## Categories of Indian Land

**Fee Simple (Fee or Taxable Land)** — Owner holds title to the property, and can sell the land or make decisions about its use without government oversight. The Land Buy-Back Program is not purchasing fee land interests.

**Restricted Fee Land** — Individual or tribe holds title, but there are restrictions on how land can be used or disposed of.

**Trust Land** — Title is held in trust by the U.S. government, which restricts how it can be used or disposed of.





# Reviews and appeals: How to challenge an OAS appraisal

Most landowners believe their property is worth more than it really is, so it's not surprising that many are unhappy when the appraised value is lower than they had anticipated. This doesn't mean the appraisal is wrong. When considering the outcome of the appraisal, the landowner should focus on whether the appraisal was done correctly, not on the appraised value. Arvel Hale is the former chief appraiser for the Bureau of Indian Affairs (BIA) in Washington, D.C. He offers three tests landowners can use to determine if an appraisal is valid:

- Is it mathematically and statistically correct?
- Is it consistent with appraisal theory and professional standards?
- Is it logical?

"The numbers have to add up. If the appraisal report says there is a relationship between x and y, there had better be a relationship between x and y," Hale said. "The bottom line is, the appraisal has to make sense to people who aren't appraisers."

### It's all about the details

The landowner should read the appraisal report carefully and check the factual data — the number of acres, land use, building inventory, easements, water rights and utilities — to ensure that it is correct.

- Does the report describe the property rights to be conveyed?
- Does it evaluate the characteristics of the property accurately and in detail?
- Have the market conditions been thoroughly researched?
- Are the comparable sales accurate?

The Uniform Standards of Professional Appraisal Practice (USPAP) govern how appraisals are done, and the appraiser must be a Certified General Appraiser. If landowners suspect that the appraiser has not lived up to those standards, they need to ask more questions. (Learn more at [www.appraisalfoundation.org](http://www.appraisalfoundation.org))

Appraisers do make mistakes. "This isn't a machine where you can write code and anticipate that everything is going to work out," Hale said. "If you see an error, you should speak up and give them the opportunity to correct it."

No matter how much time and effort the landowner puts into reviewing the appraisal, he or she is always at a disadvantage. After all, the appraiser, the Office of Appraisal Services (OAS), and others involved (tribes, local governments,



Landowners should carefully review the final appraisal report to ensure that it is accurate and complete.

corporations) do these transactions regularly. Typical landowners do not.

"My personal sympathy has always been with the individual landowner," Hale said. "They don't have the benefit of having gone to school to learn this stuff so they kind of depend on their tribal leaders and the Bureau."

### How to file an appeal

Hale has been a BIA appraiser, a member of the Washington State Appraisal Commission, and sits on the Yakima County Board of Equalization, so he is in a unique position to understand the appeal process. He offers these steps to follow when making an appeal:

- **Step 1** — Prepare a rebuttal based on relevant, factual information. "Resorting to emotion, hearsay, generalizations and bad logic will only cause frustration and anger," Hale cautioned.
- **Step 2** — Analyze the report and try to duplicate the appraiser's logic and process. "You may be amazed at the number of errors you can discover," Hale said.
- **Step 3** — Appeal to the BIA Agency Superintendent, and be prepared to appeal his decision to the regional director, BIA

Board of Hearings and Appeals and finally to Federal Court.

- **Step 4** — At any point in the process, landowners can file a complaint with the state licensing board.

### A dose of reality

When Dave Baker was a regional appraiser with the BIA in South Dakota, he reviewed appraisals to see if there were factual errors, such as in the legal description of the property. The appraiser might have missed an important element of the property, such as a fresh water source that needed to be considered.

Sometimes the math doesn't add up, but if the numbers cannot be disputed, then there is not much the landowner can do. If there is a legitimate problem with the appraisal, the landowner can always file a complaint about the appraiser with the state licensing board. There's just one problem:

"There's a loophole for federal employees," Baker explained "A federal appraiser only has to be licensed in one state, but can work in other states. If the appraiser is licensed in California, but the land in question is in South Dakota, who is responsible for the appraiser's performance?"

As many unhappy landowners have discovered, nobody wants that responsibility. If an Indian landowner in South Dakota is to complain about an appraiser with a California license, the landowner needs to contact the California licensing authority.

"California will tell the landowner they have no jurisdiction for appraisals done in South Dakota," Baker explained. "South Dakota is going to say they have no jurisdiction over the appraiser because he is not licensed there. It is assumed that the state that licensed the appraiser is responsible for monitoring his or her work regardless of where the property is located, but it doesn't usually work out that way. Right now, the Indian landowner is left holding the bag because he has nobody to turn to."





## Appraisers of Indian land are in short supply

Few people outside of Indian Country understand the complexities of reservation land, but of the approximately 100,000 licensed real estate appraisers in the United States, just a handful are Native American. Not only is there a shortage of Indian people entering the field but the appraisal profession as a whole is having difficulty attracting newcomers.

"There is a real shortage of appraisers in Indian Country and I'm booked four months out," said Dave Baker of Wesdak Appraisals, who is a former regional appraiser for the Bureau of Indian Affairs (BIA) in Rapid City, S.D. "We desperately need more appraisers but the regulations make it difficult to attract good people," he said.

The requirements are stringent. After earning a four-year degree, would-be appraisers must do a multi-year apprenticeship with an experienced professional, take an additional 300 hours of coursework, and pass a rigorous licensing exam. Baker believes the best solution is for tribes to hire Native people who are interested in becoming appraisers and contract with the federal government to provide the training.

"The BIA did it at Fort Belknap," Baker said. "The BIA provided the training and mentorship and the Tribes paid the person's salary. It worked very well and it's a model that can be used to train Natives for a variety of professions."



The Indian Land Tenure Foundation published an entire issue of *Message Runner* (Fall 2016, Volume 7) devoted to career opportunities in Indian land. Appraisal was one of the professions profiled.

Electronic copies are available by visiting [www.iltf.org/resources/publications](http://www.iltf.org/resources/publications). To order paper copies, email [info@iltf.org](mailto:info@iltf.org) or call (651) 766-8999.

## Message Runner

ILTF first published the *Message Runner* in 2002 to provide Indian people and others with much-needed information about Indian land tenure issues. Previous volumes include:

**Vol. 1** — "Restoring Indian Lands." Major issues surrounding Indian land tenure along with solutions and strategies.

**Vol. 2** — A primer on Indian estate planning and probate, including the 2004 American Indian Probate Reform Act (AIPRA).

**Vol. 3** — "Rights-of-Way." History of rights-of-way in Indian Country, including a helpful how-to section for landowners and tribes.

**Vol. 4** — "From Removal to Recovery: Land Ownership in Indian Country," an historical account of Indian land ownership from pre-contact to today.

**Vol. 5** — "Cutting through the Red Tape: An Indian Landowner's Guide to Reading and Processing Federal Forms."

**Vol. 6** — "Native Land Law: Can Native American People Find Justice in the U.S. Legal System?"

**Vol. 7** — "Now hiring! Exploring career opportunities in tribal land."

To learn more about the *Message Runner*, visit [www.iltf.org/resources/publications](http://www.iltf.org/resources/publications). To order copies, email [info@iltf.org](mailto:info@iltf.org) or call (651)766-8999.

## Glossary

### Appraisal

The act or process of developing an opinion of value. Almost all land transactions in Indian Country require an appraisal.

### Appraiser

One who competently performs valuation services in an independent, impartial, and objective way.

### Cost Approach

Appraisal method that determines value by combining the value of the land with the cost to reproduce all of the improvements, less depreciation.

### Fair Market Value

An opinion, of what a property would sell for in an open and competitive market, and what a ready, willing and able buyer might pay for a property in the current market.

### Highest & Best Use (HBU)

Determines how land can produce the most value. HBU is about what land could be used for, not what it is being used for now. HBU must meet four criteria: It has to be legally permissible, physically possible, financially feasible, and maximally productive.

### Income Approach

Appraisal method commonly used for commercial properties. Asks how much income can the property produce, including the proceeds of a future sale.

### Mass Appraisal

Process used to value many properties that are similar in use (e.g., pasture or dry crop) and have active/consistent markets or comparable sales data. The process uses common data, standardized methods and statistical testing and allows for greater efficiency and consistency in valuations. This is the method used by the Land Buy-Back Program for Tribal Nations.

### Mineral deposit

Identifiable geologic occurrence of minerals of a size and concentration that may have potential for economic recovery, now or in the future. Typical minerals may include oil, gas, coal, sand and gravel.

### Sales Approach

Method of appraisal based on a direct comparison between the property being appraised and other properties sold or listed for sale in the area.

### Types of Value

There are several different types of value but the most commonly used include:

- ▶ **Assessed value** — As determined by governments for taxation purposes.
- ▶ **Going-concern value** — As part of an ongoing business, such as an auto repair shop or laundromat.
- ▶ **Insurable value** — Value as covered by an insurance policy.
- ▶ **Investment value** — Value to a specific buyer at a particular time.
- ▶ **Liquidation value** — Used in bankruptcy proceedings. Assumes seller must sell.
- ▶ **Market value** — What a buyer will pay and a seller will likely accept in an open market.
- ▶ **Value in use** — Value to a particular landowner depending on how the land is used.

### Uniform Standards of Appraisal Practice (USPAP)

The generally recognized ethical and performance standards for the appraisal profession. Compliance is required for state-licensed and certified appraisers involved in federally related land transactions, including Indian land. Learn more at [www.appraisalfoundation.org](http://www.appraisalfoundation.org).



The Indian Land Tenure Foundation (ILTF) is a national, community-based organization focused on American Indian land recovery and management. ILTF's primary aim is to ensure that all reservation and important off-reservation lands are owned and managed by Indian people and Indian nations.

As a community foundation, ILTF relies on funding from private foundations and donations from Indian nations, corporations and individuals to support its programming in Indian Country. Please consider making a donation to the Indian Land Tenure Foundation today.

To learn more about our work and programs, and to make a donation, visit our website at: [www.iltf.org](http://www.iltf.org).

### Indian Land Tenure Foundation

151 East County Road B2  
Little Canada, MN, 55117-1523  
651-766-8999  
[www.iltf.org](http://www.iltf.org)

Fall 2017, Volume 8