

DOE/IG-0502

AUDIT
REPORT

SALE OF LAND
AT OAK RIDGE



May 2001

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES



DEPARTMENT OF ENERGY
Washington, DC 20585

May 7, 2001

MEMORANDUM FOR THE SECRETARY

FROM: Gregory H. Friedman (Signed)
Inspector General
SUBJECT: INFORMATION: Audit Report on the "Sale of Land at Oak Ridge"

BACKGROUND

Under the Atomic Energy Act of 1954, the U.S. Department of Energy (Department) may sell land in the performance of identified programmatic functions. The functions specified in the Atomic Energy Act include encouraging scientific and industrial progress, controlling special nuclear material, encouraging utilization of atomic energy for peaceful purposes, promoting the common defense, and the administration of programs that implement these functions.

In February 2001, the Department sold 182 acres of land in Oak Ridge, Tennessee, for \$54 per acre to a private development company. The property provides river access to an adjoining 1,217 acre parcel that the developer acquired for a new housing development. Available documentation confirmed that the purchase of the 1,217 acre parcel was contingent upon the developer acquiring the Department's river access property. The Department sold the land under special authorities granted in the Atomic Energy Act. By invoking these special authorities, the Department was not required to follow the standard Federal practices for property sales, such as advertising, seeking competitive bids, and obtaining independent appraisals to establish the property's fair market value.

The objective of this audit was to determine if the sale of land was an appropriate use of the special authorities granted under the Atomic Energy Act.

RESULTS OF AUDIT

While we recognize that the Department had the legal authority to conduct the February 2001 sale of land to a private developer, we do not believe that this action was an appropriate use of this authority. The Atomic Energy Act gives the Department authority to sell land in the performance of a programmatic function without regard to standard Federal practices. In our judgement, this sale did not meet those requirements. The Department invoked the authority of the Atomic Energy Act because it has broadly interpreted what it defines as a programmatic function under the Act. Further, the Department sought to facilitate the sale to the "preferred" purchaser. As a result, there was no assurance that the land was sold at fair market value and in the best interests of the Government.

MANAGEMENT REACTION

Management did not concur with the finding and recommendation. It contended that all the actions taken were within the Department's authority.

Attachment

cc: Acting Director, Office of Management and Administration

SALE OF LAND AT OAK RIDGE

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OVERVIEW

INTRODUCTION AND OBJECTIVE

In February 2001, the U.S. Department of Energy (Department) sold 182 acres of land for \$54 per acre to a private development company. The parcel is a narrow band of land with approximately six miles of meandering shoreline along the Clinch River and across from the Department's East Tennessee Technology Park in Roane County, Tennessee and within the 500-year floodplain of the Clinch River. Around 69 acres of the land are identified as wetlands. The Tennessee Valley Authority (TVA) holds flowage and navigation rights for a portion of the land and has responsibility for the area's shoreline management. The land provides river access to an adjoining 1,217-acre parcel that the developer acquired, contingent on the purchase of the Department's land. The developer plans to construct as many as 1,500 new homes on the 1,217-acre property.

The Department sold the land under special authorities granted in Section 161g of the Atomic Energy Act of 1954 (Act). The purpose of the Act was to provide for programs to encourage scientific and industrial progress, control special nuclear material, encourage utilization of atomic energy for peaceful purposes, promote the common defense, and the administration of these programs. By invoking these special authorities, the Department was not required to follow standard Federal practices for property sales, such as advertising, seeking competitive bids, and obtaining independent appraisals to establish the property's fair market value. Standard Federal practices also typically require that the General Services Administration (GSA) dispose of excess Government-owned property.

The Office of Inspector General (OIG) has issued two prior reports regarding land sales at Oak Ridge. In January 1997, the OIG issued Report DOE/IG-0399, *Audit of the U.S. Department of Energy's Identification and Disposal of Nonessential Land*. The audit determined that the Department retained significant amounts of land, including about 16,000 acres at Oak Ridge, which were not essential to current and foreseeable mission requirements. Rather than dispose of the nonessential land at Oak Ridge, the Department retained ownership until local entities expressed an interest in acquiring specific parcels. The Department sometimes declared the parcels to be excess and sold the parcels to local entities at the appraised value using the authority granted by the Act. The audit concluded that the Department should exercise greater care in disposing of Government-owned land. Specifically, all interested parties should be given the opportunity to acquire excess land holdings.

In November 1998, the OIG issued Report ER-L-99-01, *Audit of Sale of Land to an Oak Ridge Hospital*. The audit determined that the Department sold 3.5 acres of land and 2 buildings to a local hospital using the authority of the Energy Act instead of following standard Federal practices. The audit questioned whether the authority granted by the Energy Act should be used to avoid standard Federal practices when disposing of excess land at Oak Ridge, and whether it was in the Government's best interest for the Department to use proceeds from the sale of Federal property to augment appropriations rather than deposit cash in the U.S. Treasury.

Currently, the OIG is performing an audit of the Department's "Hanford Reach National Monument". The purpose of this audit is to determine if the Department should retain ownership of the monument, which consists of 195,000 acres.

The objective of this audit was to determine if the sale of land was an appropriate use of the special authorities granted under the Energy Act.

CONCLUSIONS AND OBSERVATIONS

While we recognize that the Department had the legal authority to conduct the February 2001 land sale to a private developer, we do not believe that this action was an appropriate use of this authority. Although the Act gives the Department authority to sell land in the performance of a programmatic function without regard to standard Federal practices, this sale did not meet those requirements. The Department invoked the authority of the Act because it has broadly interpreted what it defines as a programmatic function under the Act. Furthermore, the Department sought to facilitate the sale to the "preferred" purchaser. As a result, the Department has no assurance that the land was sold at fair market value and in the best interests of the Government.

The current audit identified issues that management should consider when preparing its yearend assurance memorandum on internal controls.

Signed
Office of Inspector General

USE OF ATOMIC ENERGY ACT

Inappropriate Use of Special Authority

In our opinion, the February 2001 sale of land to a private developer was not an appropriate use of the special authorities granted under the Act. The sale was not made to directly further any of the programmatic functions identified in the Act. Instead, the sale was made to facilitate the sale of adjoining property. In March 1999, the Department received a letter from the owner of 1,217 acres of adjoining land stating that the sale of its property was contingent on the sale of the 182 acres owned by the Department. The landowner requested that the Department convey title to the land. In August 1999, the Department committed to selling the land to the adjoining landowner contingent on the completion of an environmental assessment of the impact of the sale. The environmental assessment was completed in January 2001 and the Department sold the property to the developer on February 6, 2001.

Energy Act Authorizes Sales for Programmatic Functions Without Regard to Standard Federal Practices

Section 161g of the Act gives the Department authority to sell land in the performance of a programmatic function identified in the Act without regard to standard Federal practices. The programmatic functions include encouraging scientific and industrial progress, controlling special nuclear material, encouraging utilization of atomic energy for peaceful purposes, promoting the common defense, and the administration of programs that implement these functions.

The Federal Property and Administrative Services Act of 1949 established standard Federal practices to ensure that Government-owned land is sold in the most economical manner consistent with the best interests of the Government. Standard Federal practices typically require that the GSA dispose of property declared excess to an agency's needs. After being reported to GSA as excess, the property is first made available to other Government agencies. Once declared surplus to the Government's needs, the disposal process typically includes appraising the land to establish a fair market value, publicizing the land to be sold in the *Commerce Business Daily*, and furnishing all prospective purchasers written invitations to make an offer.

Department Broadly Interpreted Authority and Invoked Authority to Achieve Desired Sale

The Department has broadly interpreted what it defines as a programmatic function under the Act. The Department has determined that land sales made under the authority of the Act do not have to directly further nuclear programs. Instead, the Department concluded that sales could also be made that indirectly benefited these programs, such as sales made for economic development in local communities. In addition, the Department believed that any land originally purchased under the authority of the Act may also be sold under the authority of the Act.

The Department invoked the authority of the Act to facilitate the sale to the preferred purchaser. In a Federal Register statement of findings, the Department stated that five alternatives for maintaining or disposing of the land were considered. These alternatives included: (1) conveyance to the adjoining landowner (the preferred alternative); (2) conveyance to the TVA; (3) conveyance to the City of Oak Ridge or Roane County; (4) Department retention with easements granted to the adjoining landowner; and, (5) no action. However, we found no evidence that the Department gave serious consideration to any of the alternatives other than the preferred alternative. The Department concluded that the peninsula-type configuration of the land would create an economic encumbrance if the land were conveyed to any party other than the adjoining landowner. Therefore, alternatives two and three were dismissed. In addition, Department correspondence stated that alternatives four and five were dismissed because the Department was required to divest ownership once the land was formally declared as excess. We noted that the 182 acre parcel of land was never declared excess.

Department Has No Assurance the Land Was Sold at Fair Market Value and In the Best Interests of the Government

As a result, the Department has no assurance that the land was sold at a fair market value and in the best interests of the Government. For instance, the Department did not obtain its own independent appraisal of the land to determine a fair price. Instead, the Department relied on an appraisal obtained by the buyer.

We reviewed the buyer's appraisal. The buyer's appraisal arrived at an estimated "market value" of \$36,400, or \$200 per acre. This value is significantly higher than the price (\$54 per acre) for which the Department sold the property. The buyer's appraisal included a definition of "market value":

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

We found no satisfactory justification for selling the property at such a steep discount from the estimated market value reached by the buyer's appraisal. The Department maintains it advised the buyer's appraiser of the need to give additional consideration to potential flooding in reaching the estimated value.

The appraiser had already reduced the valuation by 95 percent (from \$4,000 per acre) to account for the land's irregular shape, limited access, flood plain location, and restrictions imposed by the Tennessee Valley Authority. If a further reduction in value by the buyer's appraiser was warranted, it would seem appropriate for the written appraisal to have been revised accordingly.

The significant difference with respect to the final price only heightens our concern regarding the manner in which the Department handled this sale of land. Even if the Department's position is accepted—that it was appropriate to use the provisions of the Atomic Energy Act to dispense with the regular procedures associated with a sale of Government land--the Department does not appear to have exercised prudent business judgment in agreeing to the final sale price.

In addition, several local citizens and environmental groups have publicly objected to the sale, stating that they would have paid more for the property if they were given the opportunity to acquire it for other uses. Further, in a letter to the Department, one local group complained that the Department's assessment of potential impacts from the sale of the land were incorrectly based on the assumption that other governing agencies, such as the TVA, would have the authority to prevent damage to the shoreline. The TVA expressed similar concerns, stating that conveyance of the land to TVA would be preferable for the protection of the shoreline.

RECOMMENDATIONS

We recommend that the Manager, Oak Ridge Operations Office, follow standard Federal practices for the sale of land not directly involving programmatic functions instead of invoking the special authorities granted in Section 161g of the Act.

MANAGEMENT REACTION

Management did not concur with the finding and recommendation. Management believed that the use of the special authorities was consistent with their interpretation of these authorities and a formal process that includes screening for use by other parties was unnecessary. Also, management disagreed with the statement that the Department could not assure the land was sold at fair market value because the Department did not obtain its own appraisal. Management stated that there was no requirement for the Department to obtain its

own appraisal for this sale and appraisal techniques would not have considered what other groups would have paid for the land. Finally, management stated that any construction or development on the land would fall under the TVA's jurisdiction and would require additional protective measures such as permits.

AUDITOR COMMENTS

We recognize that the Department possessed authority to sell land under the Atomic Energy Act; but we do not believe that these actions were an appropriate use of this authority. The Department should have publicized the land and sought competitive bids to ensure all interested parties had an opportunity to bid, and to ensure the Government received top dollar for the property, provided the highest bidder agreed to abide by local zoning laws and other restrictions. In addition, we recognize that the deed for the land restricts construction of any buildings or structures on the parcel without the TVA's advance approval. Still there is no guarantee that the restrictions will be fully adhered to or that the shoreline will not be damaged. Standard Federal practices were established to ensure a sense of fairness while protecting the interests of the Government. Therefore, we believe that standard Federal practices should have been followed.

Appendix

SCOPE

The audit was performed from April 6, 2001, to April 18, 2001, at the Operations Office in Oak Ridge, Tennessee. The scope of the audit included the Department's sale of a 182-acre parcel of land in Roane County, Tennessee, to a private development company in February 2001.

METHODOLOGY

To accomplish the audit objective, we:

- Reviewed Federal and Departmental requirements related to the sale of land;
- Discussed the sale with Departmental personnel;
- Reviewed legal opinions expressed by the Department's General Counsel; and,
- Examined supporting documentation.

The audit was performed in accordance with generally accepted Government auditing standards for performance audits, and included tests of internal controls and compliance with laws and regulations to the extent necessary to satisfy the audit objective. Accordingly, we assessed the significant internal controls related to the sale of land. Because our review was limited, it would not necessarily have identified all internal control deficiencies that may have existed. Additionally, we did not rely on computer-processed data. In addition, we reviewed the implementation of the Government Performance and Results Act of 1993 as it related to the sale of land. No specific performance measures were established for the sale of land because of the infrequency in which sales occur.

We held an exit conference with the Deputy Manager for Business Affairs, Oak Ridge Operations Office, on April 25, 2001.

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