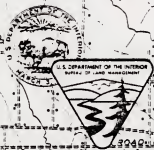


ID 88047174 - EXACT WO TRACT LIB 80,540
HD 183 123 L364 1980

THE SMALL TRACT ACT

(Act of June 1, As Amended)

GUIDE BOOK FOR MANAGING EXISTING SMALL TRACT AREAS



Bureau of Land Management
U.S. Department of the Interior
April 1, 1980

Instruction Memo No. 80-540

BLM LIBRARY
RS 150A BLDG. 50
DENVER FEDERAL CENTER
PO. BOX 25047
DENVER, CO 80225

TABLE OF CONTENTS

	Page
I. HISTORY	
A. Legislation.....	4
B. Administrative Policies.....	5
C. Operations 1938 - 1945.....	9
D. Operations 1945 - 1956.....	11
E. Operations 1956 - 1977.....	12
F. General Discussion.....	22
II. PRESENT SITUATION	
A. Repeal of the Small Tract Act.....	25
B. Small Tract Classification Orders.....	29
C. Categories of Small Tract Areas.....	35
1. Blocked-up areas	
2. Heavily intermixed ownership areas	
3. Scattered remaining Federal ownership	
4. Pending Small Tract applications	
5. Existing Small Tract leases	
III. COURSE OF ACTION	
A. Withdrawal Review Relationship.....	38
B. Classification Review Process.....	39
C. Lands Activity Planning.....	40
IV. QUESTIONS AND ANSWERS.....	44

Encl. 1-1

BLM LIBRARY
RS 150A BLDG. 50
DENVER FEDERAL CENTER
P.O. BOX 25047
DENVER, CO 80225

APPENDICES

Appendix A Bureau Resources Evaluations, California
and Nevada

Appendix B BLM Reports on Status of Small Tract
Classifications

Appendix C Sample Small Classifications and Revocation
Orders

Appendix D Sample - Typical Small Tract Area Land Ownership
Patterns

Appendix E Legal Opinions

Appendix F Sample Decisions on Small Tract Cases

STAFF CONTRIBUTORS:

Rolla E. Chandler, Chief, Division of Lands and Realty, Washington Office

Harry Miwa, Realty Specialist, California State Office

Dick Morrison, Realty Specialist, Nevada State Office

Jeff Steele, Chief, Branch of Lands & Minerals, Riverside District Office,
California

This Guidebook is the direct result of findings contained in
Multi-Resource Evaluations conducted in California in 1977, and Nevada in
1978, which recommended that a "Handbook" be developed for Bureauwide use
describing how to manage existing small tract areas (see Appendix A).

I. HISTORY

A. Legislation

The Small Tract Act of June 1, 1938 (52 Stat. 609) as amended (43 U.S.C. 682a), authorized the Secretary of the Interior, in his discretion, to sell or lease any tract, not exceeding five acres, of vacant, unreserved public lands, or certain classes or reserved public lands, which he may classify as chiefly valuable for residence, recreation, business or community sites.

The act had its origin in suggestions for legislation arising from experience with land settlement in Southern California. Persons who had desired to settle in desert areas mainly for health reasons had found that there was no public land law under which one could acquire a tract of public lands for such purposes. Entry under the homestead or desert land laws was not practicable in these areas since no irrigation water was available.

Two bills were introduced in the 74th Congress to amend the homestead laws so as to permit the desired type of settlement, but neither bill was adopted.

In the 75th Congress, two bills were again introduced. Subsequently, the Department of the Interior was asked to submit a legislative draft. This draft, with several amendments, became the act of June 1, 1938 (52 Stat. 609).

The original law excluded Alaska from its terms. The act of July 14, 1945, (59 Stat. 467) extended the benefits of the law to Alaska.

Attempts were made to amend the act in the 80th, 81st and 82nd Congresses, but no changes were made in the law until the passage of the act of June 8, 1954, by the 83rd Congress. The act of June 8, 1954 (68 Stat. 239) changed the law in three important ways: (1) extension of the law to unsurveyed lands; (2) authorization of leases and sales to associations, corporations and state or local governments; and (3) extension of the law to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in Oregon, subject to the provisions that such lands shall be leased only for residential, recreational or community-site purposes, and not for business purposes, without interference with sustained-site timber management.

The law itself placed few restrictions on the conditions under which a small tract may be leased or sold. However, various requirements were established by regulations of the Department of the Interior to carry out the intent and purpose of the act in relation to other public land laws.

B. Administrative Policies

The policy of the Department of the Interior in administering the act was "to promote the beneficial utilization of the public lands...and at the same time to safeguard the public interest.."(43 CFR 257.2(a)).

"To this end small tract sites would be considered in the light of their effect upon the conservation of natural resources and upon the communities or area involved. Lands were not to be leased or sold, for example, which would lead to private ownership or control of scenic attractions, or water resources, or other areas that should be kept open to public use." The policy also provided that isolated settlement would be avoided if it imposed heavy burdens on local government; undesirable types of construction along public highways or parkways would be avoided and lands not leased or sold if such action "would unreasonable interfere with the use of water for grazing purposes or unduly impair the protection of watershed areas."

To carry out this general policy, the early plan of the Department was to examine accessible sites in advance of application by individuals and then classify and open them for lease or for lease with option to purchase. At the same time, the principle was placed in effect that any applicant who filed for a tract prior to its classification and opening by the Government should be accorded a preference right over later applicants for the lease or sale of the land. The original Circular (regulations) under the act, No. 1470 of June 10, 1940, provided that leases rather than outright sales would be employed, but that the Secretary of the Interior might offer to sell the lands at any time, either upon individual application or on his own motion. The term of lease was fixed at not more than five years, and the purchase price in event of sale was to be fixed by the Secretary at not

less than \$1.25 per acre, plus the cost of cadastral survey.

A major change of policy was introduced by the regulations of May 27, 1947, Circular No. 1547. The system of leases with option to purchase was amended to provide for sale of the lands at an appraised price on the condition that the lands be improved in accordance with requirements contained in the lease or the classification order. Also, applicants were required to declare that they had personally examined the lands applied for, and installment payments for lands purchased were authorized.

Circular No. 1740 of December 10, 1948, among other things, eliminated the requirement for personal examination of the land, which had been found to be partially impracticable owing to lack of positive tract identification in advance of settlement.

Important procedural changes were introduced by Circular No. 1764 of September 11, 1950. Among these were (1) introduction of a veteran's drawing entry card system to be used where large numbers of entrants were interested; (2) more liberal provision for refund of application service fees; (3) reduction to three years of maximum term of a lease with option to purchase that could be issued by a land office; (4) prohibition of subleasing and (5) provisions relating to the approval of assignments and renewals of leases.

In accordance with provisions of the Small Tract Act, all minerals in small tracts were reserved to the Government. Circular No.

1881 of September 10, 1954, authorized prospecting by federal agencies for minerals in lands that had been classified for lease and sale under the act.

Circular No. 1889 of January 10, 1955, effective March 11, 1955, was a major revision resulting partly from new legislation (act of June 8, 1954) and partly from the introduction of new departmental policies. The direct sale of small tracts at public auction was authorized for the first time. However, this authority was limited to certain eastern states and, insofar as lands in other states or in Alaska were concerned, only "where counties and local communities have adequate authority to establish building, sanitation and health requirements for the protection of adjacent property and the community as a whole," or where a prior lease had terminated, been relinquished, or cancelled.

Other important changes made by Circular No. 1889 included: (1) provision for segregation of lands classified for small tract purposes from all other forms of appropriation under the public land laws, including mineral locations; (2) authorization of sales, without improvement of the land, to groups of lessees holding options to purchase, where such lessees had entered into binding agreements among themselves to observe standards of building, health and sanitation requirements consistent with the terms of their leases; (3) elimination of installment payments; and (4) elimination of the preference formerly given to the first applicant for a terminated lease tract by substitu-

ting the disposal of such tracts, either by public auction or by lease, to the successful entrant in a special drawing.

Circular No. 1911 of June 28, 1955, reinstated the necessity for personal examination of the land, by requiring either examination of the tract applied for or public lands within a mile thereof. The reinstatement of this inspection requirement was necessary to curb the activities of land locators and promoters who were soliciting applications from thousands of persons having no knowledge of the land they were applying for or the uses to which it might be put. This requirement was interpreted to mean personal examination on the ground, not merely airplane overflight "inspection", or travel by an agent. The personal inspection requirement was not extended to successful entrants in a drawing or bidders in an auction, however.

Under delegation orders of the Department of the Interior, and redelegation orders of the Bureau of Land Management, initial decisions on small tract cases were normally made by field offices of the Bureau. Decisions of Bureau field officers could be appealed under the rules of practice to the Director of the Bureau, and from his ruling to the Secretary of the Interior (43 CFR Part 221).

C. Operations 1938-1945

The record of operations of the Department of the Interior under the Small Tract Act forms another chapter in the long history of the disposal of the public lands. Operations, particularly those developing

after World War II, created numerous difficult administrative problems, some of which have not been satisfactorily solved.

At the conception, demand for lands under the Small Tract Act developed rather slowly and was limited to desert areas in Southern California.

During World War II, military construction activities and other factors contributed to a rapid increase in the demand for settlement sites in Alaska.

From 1940 to 1944, an annual average of 330 small tract applications were filed with the former General Land Office. The program was generally one of classifying and opening suitable areas in advance of individual application. Then, in 1945, approximately 3,000 small tract lease applications were filed. To meet the sudden increase in demand, special land investigations were scheduled, resulting in the classification and opening of more than 30,000 acres in that year to small tract disposal.

As of June 30, 1945, nearly 45,000 acres had been classified and opened to small tract disposal. Approximately 37,000 acres of this land was in San Bernardino County, California. However, only 626 small tract leases were then in force. Of these, 583 were for public lands located in California.

D. Operations 1945-1956

As interest of returning veterans and others grew, the rush of individual applications in unclassified and unopened areas became such that efforts toward advance investigations, classification and opening at the motion of the government had to be partially abandoned. Some of the Land Offices experienced a growing backlog of pending applications.

The volume of new applications for small tract leases filed with the Bureau of Land Management increased annually, reaching a peak of 32,304 cases in fiscal year 1955. Reactivation of small tract leases and small tract sales (lease options) - required where a new adjudication action occurred on a case formerly closed - rose to a total of 13,177 cases in 1956.

The total small tract case workload before the Bureau of Land Management in 1956 was 63,357 cases. The Bureau did not have the personnel and financial resources to accommodate a workload of this magnitude. As a result, in 1956, a new high of 36,212 unclosed small tract lease and sales cases was carried over into the next fiscal year. The backlog of work was largest in the Los Angeles and Reno Land Offices.

A rapid build-up in purchases of small tract under lease-option contracts occurred in the last three years. Further rapid increase in the volume of purchase applications developed as the existing lease-holders completed their improvement requirements or otherwise became qualified to apply for purchase of their tracts.

Likewise, a rapid gain was made in the issuance of small tract patents in fiscal year 1956. A total of 4,167 patents were issued, compared with 3,433 in 1955 and 2,933 patents in all prior years combined.

Authority for sales of small tracts without prior leasing was first granted to the Bureau of Land Management by amendment to the regulations of the Department of the Interior effective March 11, 1955. By June 30, 1956, a total of 237 auction sale cases had been opened in Bureau Land Offices, of which 150 cases had been closed.

E. Operations 1956-1977

Popularity of small tracts for recreation and homesites continued to expand at a rapid pace from the mid 1950's. This interest was significant in the growing metropolitan areas of southern California, Nevada and Arizona. The desire of the urban population seeking escape to weekend and recreation homesites, and the availability of public land located in the desert areas created a tremendous demand under the Small Tract Act. This demand, generated in part by promotional activity of land locators and speculators, resulted in the filing of thousands of applications and created a significant workload on the Bureau's lands program.

To cope with the processing of this huge volume of applications, waivers or amendments of the Small Tracts Act regulations and policies were made to facilitate processing action. On March 28, 1961, the

Assistant Secretary approved a memorandum removing limitations on direct sales of small tracts, thus enabling expeditious disposition of applications filed by qualified applicants. In February 1962, the Secretary adopted new rules that provided for closer cooperation with local governments in classifying public lands for small tract development. As another step to insure coordination of the small tract program with local government plans and to discourage unethical promotion of small tract filings, the regulations were amended in January 1963 to permit acceptance of applications only for lands opened to such applications.

In September 1964 the Bureau issued instructions that all small tract opening orders were to be submitted to the Washington Office for review prior to issuance to assure such classifications were consistent with policies set out in the Small Tract regulations.

These regulatory changes, along with land use controls implemented by the state and local governments, acted gradually to bring the small tract sale program to a near halt in the mid 1970's.

The change in the regulations allowing for direct sales to applicants and public auctions of tracts, wherever appropriate, facilitated the disposal of available tracts in many areas. There was a substantial increase in issuance of small tracts patents, rising from 4,167 patents in 1956 to a peak of 9,908 patents issued in 1960. Several years thereafter due to deemphasis of the sales program and over abundance of lands, both federal and private, there was a sharp decline in the disposition of small tracts. There were only 900 tracts patented

in 1965, and by 1972, the number of sales was drastically reduced to only 88 tracts. Since 1972, disposals under the Act were limited primarily to situations to accommodate or legalize unauthorized occupancies or to provide disposal to individuals where the Act was the only appropriate authority available. As a result, small tract disposal diminished greatly to a low level of 23 sales in 1976 when the Act was repealed by enactment of the Federal Land Policy and Management Act. Table 1 shows the number and acres of small tracts patented during FY 1938 to 1977, by States.

Table 1
 SMALL TRACT PATENTS ISSUED, FISCAL YEARS 1938 to 1977
 (Number and Acres)

State	1938-1950		1951		1952		1953	
	No.	Acres	No.	Acres	No.	Acres	No.	Acres
Alaska	0	0	33	102	206	676	271	903
Arizona	2	10	6	30	27	121	43	214
California	71	355	43	216	203	1,014	251	1,196
Colorado	1	5	1	5	1	5	2	8
Idaho	0	0	0	0	0	0	1	1
Montana	0	0	0	0	0	0	0	0
Nevada	3	15	1	3	2	10	17	64
New Mexico	2	9	0	0	12	44	3	35
Oregon	0	0	2	6	10	28	12	20
Utah	0	0	2	6	3	17	4	20
Washington	0	0	0	0	1	1	1	1
Wyoming	0	0	0	0	0	0	0	0
<u>Eastern States</u>	<u>5</u>	<u>9</u>	<u>14</u>	<u>27</u>	<u>14</u>	<u>31</u>	<u>20</u>	<u>33</u>
	84	403	102	395	479	1,947	630	2,495

Table 1 (continued)
 SMALL TRACT PATENTS ISSUED, FISCAL YEARS 1938 to 1977
 (Number and Acres)

State	1954		1955		1956		1957	
	No.	Acres	No.	Acres	No.	Acres	No.	Acres
Alaska	392	1,091	411	1,027	294	732	431	1,026
Arizona	579	2,896	527	2,676	404	1,899	691	3,026
California	431	2,058	1,006	4,714	1,081	5,038	3,871	18,147
Colorado	5	21	16	35	10	34	42	45
Idaho	2	5	2	10	4	12	17	36
Montana	31	40	37	46	28	42	27	42
Nevada	50	181	323	1,238	1,852	7,028	1,660	6,848
New Mexico	27	106	83	161	82	176	122	573
Oregon	10	26	9	16	7	13	8	11
Utah	2	14	2	10	2	10	28	114
Washington	50	118	52	102	237	588	65	162
Wyoming	2	10	154	85	27	83	10	25
Eastern States	60	122	811	1,667	139	251	49	78
Total	1,641	6,688	3,433	11,797	4,167	15,906	7,021	30,133

Table 1 (continued)
 SMALL TRACT PATENTS ISSUED, FISCAL YEARS 1938 to 1977
 (Number and Acres)

<u>State</u>	<u>1958</u>		<u>1959</u>		<u>1960</u>		<u>1961</u>	
	<u>No.</u>	<u>Acres</u>	<u>No.</u>	<u>Acres</u>	<u>No.</u>	<u>Acres</u>	<u>No.</u>	<u>Acres</u>
Alaska	603	1,643	764	1,872	425	1,103	431	1,190
Arizona	1,101	4,080	1,344	5,866	1,682	6,126	398	1,617
California	3,231	15,166	4,590	21,091	5,013	20,883	4,663	20,256
Colorado	49	171	57	177	40	138	41	130
Idaho	6	14	27	42	41	16	22	48
Montana	2	10	42	174	3	15	3	12
Nevada	1,121	4,405	1,738	5,896	2,358	9,149	1,398	3,484
New Mexico	407	1,269	314	1,249	171	681	106	346
Oregon	23	38	10	12	21	39	16	20
Utah	4	19	81	241	104	318	56	148
Washington	90	223	33	83	29	72	83	204
Wyoming	19	55	37	142	19	78	21	69
<u>Eastern States</u>	<u>84</u>	<u>147</u>	<u>54</u>	<u>96</u>	<u>2</u>	<u>4</u>	<u>3</u>	<u>9</u>
<u>Total</u>	<u>6,740</u>	<u>27,240</u>	<u>9,091</u>	<u>36,941</u>	<u>9,908</u>	<u>38,622</u>	<u>7,241</u>	<u>27,533</u>

Table 1 (continued)
 SMALL TRACT PATENTS ISSUED, FISCAL YEARS 1938 to 1977
 (Number and Acres)

State	1962		1963		1964		1965	
	No.	Acres	No.	Acres	No.	Acres	No.	Acres
Alaska	456	1,343	471	1,430	376	1,433	185	857
Arizona	310	1,277	81	285	93	324	43	168
California	1,231	5,266	639	2,519	513	2,179	480	2,067
Colorado	53	149	58	125	32	87	41	88
Idaho	10	17	8	7	9	13	16	24
Montana	3	10	3	14	2	9	1	5
Nevada	862	2,901	537	1,906	241	950	54	216
New Mexico	147	444	489	1,496	107	350	73	225
Oregon	13	32	29	134	3	12	1	5
Utah	37	115	31	95	12	39	4	10
Washington	0	0	26	68	15	37	0	0
Wyoming	21	46	31	83	25	86	2	5
Eastern States	0	0	2	2	1	2	0	0
Total	3,143	11,600	2,405	8,164	1,429	5,521	900	3,670

Table 1 (continued)
 SMALL TRACT PATENTS ISSUED, FISCAL YEARS 1938 to 1977
 (Number and Acres)

State	1966		1967		1968		1969	
	No.	Acres	No.	Acres	No.	Acres	No.	Acres
Alaska	68	278	134	607	38	171	11	49
Arizona	1	5	0	0	0	0	0	0
California	191	772	56	247	101	459	58	249
Colorado	106	118	51	72	19	30	2	2
Idaho	1	1	1	5	1	1	2	3
Montana	3	10	0	0	1	2	1	4
Nevada	45	131	5	20	67	94	4	15
New Mexico	10	35	3	11	2	3	1	5
Oregon	1	6	0	0	0	0	0	0
Utah	2	8	2	8	1	1	2	12
Washington	0	0	0	0	0	0	0	0
Wyoming	4	10	7	21	4	19	0	0
<u>Eastern States</u>			6	11	1	1	2	1
Total	432	1,374	265	1,002	235	781	83	340

Table 1 (continued)
 SMALL TRACT PATENTS ISSUED, FISCAL YEARS 1938 to 1977
 (Number and Acres)

<u>State</u>	1970		1971		1972		1973	
	<u>No.</u>	<u>Acres</u>	<u>No.</u>	<u>Acres</u>	<u>No.</u>	<u>Acres</u>	<u>No.</u>	<u>Acres</u>
Alaska	15	65	4	20	40	191	8	43
Arizona	1	4	0	0	3	13	0	0
California	34	139	58	222	35	126	21	78
Colorado	0	0	0	0	0	0	1	2
Idaho	0	0	0	0	3	6	1	3
Montana	0	0	0	0	1	1	1	1
Nevada	0	0	4	18	1	5	1	5
New Mexico	0	0	0	0	4	2	2	3
Oregon	0	0	0	0	1	2	1	1
Utah	0	0	0	0	0	0	0	0
Washington	0	0	0	0	0	0	0	0
Wyoming	0	0	0	0	0	0	0	0
<u>Eastern States</u>	0	0	0	0	0	0	0	0
<u>Total</u>	50	208	66	260	88	346	35	136

Table 1 (continued)
 SMALL TRACT PATENTS ISSUED, FISCAL YEARS 1938 to 1977
 (Number and Acres)

State	1974		1975		1976		1977	
	No.	Acres	No.	Acres	No.	Acres	No.	Acres
Alaska	3	15	8	33	4	13	0	0
Arizona	6	26	0	0	1	4	0	0
California	2	4	0	0	5	24	2	2
Colorado	3	7	0	0	2	6	0	0
Idaho	4	19	0	0	0	0	0	0
Montana	1	1	0	0	4	2	0	0
Nevada	8	40	0	0	6	15	0	0
New Mexico	1	6	18	15	1	1	0	0
Oregon	0	0	0	0	0	0	0	0
Utah	0	0	0	0	0	0	0	0
Washington	0	0	0	0	0	0	0	0
Wyoming	0	0	0	0	0	0	0	0
<u>Eastern States</u>	0	0	0	0	0	0	0	0
Total	28	118	26	48	23	65	2	2

F. General Discussion

Since World War II, the Western States, particularly California, Nevada and Arizona have undergone rapid population increases. Although concentrated primarily in urban areas, it is significant that large tracts, some over 100 miles from major urban centers, have taken suburban aspects.

There are several factors contributing to this situation: (1) expansion or overflow into fringe areas owing to population pressure; (2) growth and dispersal of industry and manufacturing in sparsely settled areas with attendant demand for adjacent lands for housing and services; (3) development of military installations in remote areas for training purposes and manufacturing or experimental projects with accompanying demand for housing and services in the vicinity of the installation; (4) increased mobility of population with rapid travel permitting people to commute long distances; (5) improved communications, roads and road patterns; (6) "discovery" of the desert by people who have come to appreciate its climate and aesthetic values; (7) technological advances which permit comfortable desert living; (8) desire to escape from the sprawling urban areas and smog of the West Coast centers; (9) availability of Government land; and (10) promotion by realtors and filing services inflating the normal demand and containing an element of purely speculative undertakings.

Much of this development had a recreational aspect - dude

ranches, luxury resorts or cabins for weekend or vacation use. In addition, there was a growing number of permanent residents. Some of these were supported from pensions or investments, from outside income, while others were self-employed as writers, artists, etc. Probably the majority, however, were locally employed.

The combined result of the factors was that the demand for federal land under the Small Tract Act in certain areas exceeded the ability of the Bureau of Land Management to increase its capability to survey, examine and classify the lands and process the applications. Thus the Bureau was confronted with the problem of expeditiously accommodating this demand while at the same time insuring the proper classification and disposition of the lands, including proper tract layout and establishment of development standards.

The Bureau of Land Management's response to this problem was manifested in its policies and procedures. The program intended a progressive development resulting from increased experience in the administration of the Act. It was a more direct and controlled action program representing a balanced disposal effort designated to utilize the regulations to the fullest in making more small tracts available for recreational and homesite purposes.

Procedures were contained in the Bureau of Land Management Manual (Volume V, Chapter 3.1, Small Tract Lands). They provided that upon receipt of an application, or upon the motion of the government, investi-

gations would be made to determine whether lands were chiefly valuable for lease or disposal as small tracts.

As soon as the extent of the area to be investigated for small tract purposes was determined, the Land Office records were noted that the lands were "pending classification." This action served to close the lands to further small tract filing.

Lands were not to be classified as proper for small tract disposal when such classification would have had an unduly adverse effect on conservation and management of natural resources, or on the community or local governments involved as a result of isolated or scattered settlement; introduced uncontrolled, nonconforming uses in conflict with community or area plans of development, or types of settlement not desired by community area; or led to undesirable types of construction along public highways and scenic areas. Neither did the Bureau wish to become unduly involved in detailed subdivisional planning and development, zoning and building codes, which are more properly the function of local agencies. Detailed subdivisional surveys were avoided.

There were three basic methods of small tract lease and disposal in use in the early days. Two of these methods have variations. They are as follows:

1. Lease only (at rent) fixed by appraisal; purchase not authorized). This method was used in all areas where the sale of lands would not be in the public interest. It was the only method authorized under the Act for "O & C" and CBWR lands in the State of Oregon.

2. Purchase without leasing. This method was used only where the public interest did not require federal control of the development of the lands prior to purchase. Disposal was by (1) public auction with minimum bids not less than the appraised value; or (2) direct sale at the appraised value to statutory preference applicants or for community sites.

3. Lease with option to purchase (at a price fixed by appraisal). This method was used where the public interest required some measure of federal control over the development of the lands prior to purchase. The purchase was conditioned upon the completion of required improvement observing specified standards, or upon the filing of a group agreement insuring such development.

II. PRESENT SITUATION

A. Repeal of the Small Tract Act

When the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2743, 43 USC 1701) was signed into law on October 21, 1976, it provided for repeal of a myriad of outdated or obsolete disposal type public lands laws. Among the repealed laws was the Small Tract Act,

which had outlived its usefulness as a method of disposal after being in effect for over 38 years.

Provisions in FLPMA provide broad authority that can be substituted for the Small Tract Act. Section 203 provides authority for

the sales aspects of the Small Tract Act. Section 302 provides a mechanism for the continued lease of existing small tract leases when they come up for renewal consideration. Section 208 provides a means whereby special terms and conditions, covenants and reservations can be applied, if deemed necessary, in Section 203 or 302 actions to assure proper land use and protection of the public interest.

The Public Land Statistics for year 1976 shows there were 456,946 acres classified for small tract purposes as of June 30, 1976 (see Table 2). The figures are cumulative acreages and do not reflect the total areas which were actually classified during the life of the Small Tract Act. Acreage adjustments were made whenever tracts were revoked from the classification orders.

Several BLM state offices have reported the total areas classified are incorrect while others have indicated the figures are substantially correct. (Refer to comments in Appendix F).

Table 2
Total Areas Classified As of 1976 Areas Classified During 1976

<u>States</u>	<u>(Acres)</u>	<u>(Acres)</u>
Alaska	74,249	-
Arizona	8,341	-
California	313,081	5
Colorado	3,189	11
Idaho	2,683	5
Montana	1,709	2
Nevada	43,571	-
New Mexico	1,029	7
North Dakota	816	-
Oregon	1,526	-
South Dakota	17	1
Utah	3,138	-
Washington	1,886	-
Wyoming	1,717	-
Total	456,946	31

A statistical summary of the Bureau's small tract activity during 1938 to 1977 is presented on Table 3. During this period there were 647,689 acres classified for small tract purposes. Of this acreage, there were 232,473 acres or 36% of the total acreage transferred into private ownership by the issuance of 59,481 patents.

Based on the above figures, there would remain about 415,216 acres in a terminated lease tract or unsold tract category. However, various actions taken to revoke or cancel classification orders have reduced the present acreage of classified, unsold tracts. Using the area classified figure in Table 2 and the acres patented figure in Table 3, it is estimated that nearly 224,00 acres still remain classified, not patented, and subject to review under the withdrawal review process.

Table 3
Small Tract Activity, 1938-1977

Year	No. of Transfer Applications Received	No. of Lease Applications Received	Area Classified each year	Patents Issued	Acres Patented	Purchase Money ^{1/}
1938	-	-	-	-	-	-
1939	-	-	-	-	-	-
1940	-	15 ^{2/}	-	-	-	-
1941	-	900 ^{2/}	6243	-	-	-
1942	-	400 ^{2/}	3590	-	-	-
1943	-	75 ^{2/}	1518	-	-	-
1944	-	300 ^{2/}	1722	-	-	-
1945	-	3700 ^{2/}	31591	-	-	-
1946	-	5200 ^{2/}	32739	-	-	-
1947	-	5500 ^{2/}	12247	-	-	-
1948	-	2953	79182	-	-	50
1949	73	6000	74:448	31	155	6,778
1950	0	3222	13873	53	247	5,393
1951	0	5442	20750	98	381	22,949
1952	0	3148	13246	249	841	59,899
1953	0	13468	7439	597	2368	86,982
1954	0	20827	7560	1641	6687	180,165
1955	1232	32304	46445	3433	11787	561,825
1956	474	12077	24182	4167	15906	821,365
1957	1206	10759	127408	7021	30132	1,127,398
1958	632	5657	19409	6740	27239	1,314,537
1959	8791	100	22625	9091	36941	2,255,540
1960	5722	26	14410	9908	38622	3,307,381
1961	3782	11	37459	7241	27533	2,827,391
1962	1372	4	18686	3143	11600	1,769,721
1963	1792	80	7267	2405	8163	1,551,465
1964	1064	35	14345	1429	5521	1,215,819
1965	637	13	7536	900	3670	748,936
1966	204	5	247	432	1374	467,533
1967	92	7	609	265	1002	246,599
1968	92	8	143	235	781	211,010
1969	83	3 ^{1/}	197	83	340	93,161
1970	41	-	34	50	208	25,026
1971	51	-	320	66	260	58,406
1972	52	-	56	88	346	187,805
1973	39	-	49	36	136	16,887
1974	23	-	39	28	118	23,571
1975	20	-	34	26	48	25,320
1976	19	-	31	23	65	52,734
1977	6	-	10	2	2	590
TOTAL	27,499	141,536	647,669	59,481	232,473	19,271,336

^{1/} Based on final entries approved

^{2/} Partly estimates

^{3/} Combined with transfer applications after 1968

B. **Small Tract Classification Orders**

When lands were found suitable and classified for small tract purposes an appropriate classification order was issued by the classification officer.

The classification order consisted essentially of the following parts:

1. authority and classification
2. legal description
3. segregative effect of the orders
4. character of the land
5. information concerning the tracts, appraised market value, rentals, **reservations.**
6. terms and conditions of lease or sale
7. improvement requirement, if appropriate
8. information on filing of application or bidding procedures.
9. preference rights
10. statement relating to further information on the lands.

The types of orders issued include the following:

1. Classifications without an opening - This type of order was used to complete the classification and segregate the lands when conflicts made immediate opening unfeasible.

2. Opening Only - This type of order was used following a classification without opening or an opening which was limited to veterans only.

3. Classification for lease and sale with an opening calling for the filing of applications.

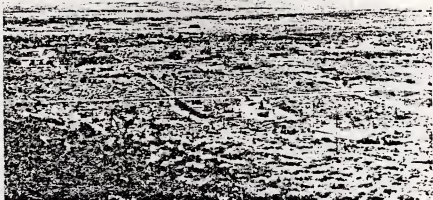
4. Classification for lease and sale with an opening calling for the filing of veterans drawing cards.

5. Classification for lease only.

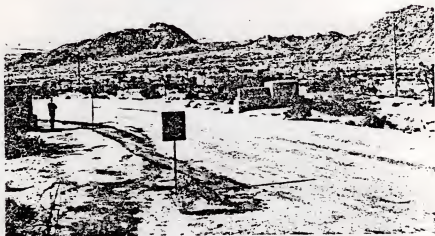
6. Classification for direct sale (to statutory preference applicants) and sale at public auctions.

The classification orders were prepared for publication in the Federal Register. Any amendments of an order were also published in the Federal Register. Only "accommodation" classifications, i.e., classifications which involved only persons entitled to preference rights under the small tract regulations, were not required to be published. Typical samples of classification orders are presented in Appendix C.

Regulatory amendments in Circular 1899, 20 FR 366, January 15, 1956, made provisions for segregation of lands classified for small tract purposes. The orders segregated the lands from all appropriations, including locations under the mining laws, except as provided in the order or in any modifications thereof. The orders, in most instances, did not segregate the lands from filing under the mineral leasing laws.



Low density high value housing development on patented small tract lands south of Apple Valley, California. This area is now within a county utility district, and is being incorporated within the expanding urban fringe of the Victorville - Apple Valley Area. These lands were patented in the late 1950's.



Recreational housing development north of the Joshua Tree National Monument boundary. Although some abandoned structures are still in evidence, small tract communities such as this in Yucca Valley, California are being converted to primary residences. This area has recently been incorporated in a county service district, hence the recent expansion.



Small tract area NE of Palm Springs, California, area constitutes primarily winter seasonal residences within which some intermix public lands holdings still exist. This area has recently been incorporated into the County water system with a subsequent increase in land values and public demand for remaining public lands.

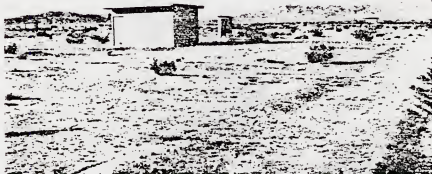
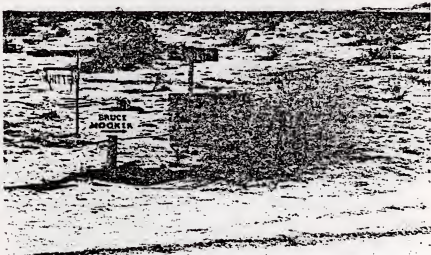


Photo taken of a small tract area east of Twentynine Palms, California. Because of the lack of water and utilities servicing the area most tracts remain abandoned and unoccupied. The photo reflects the minimum structural dimensional standards required by local ordinance and the small tract classification order.



Photo taken at the entrance of an isolated small tract development (Timico Acres) located west of Landers, California. The development remains in low grade seasonal housing primarily due to the lack of water.



Isolated small tract areas in the California Desert Conservation Area have been subject to recurring vandalism. County law enforcement and services in such areas are minimal primarily because of the relatively remote location.



Photo illustrates a small tract area located in the Santa Rosa Mountains southeast of Palm Springs, California. The rugged terrain in this area has caused access problems with most right-of-ways not aligned with easements reserved in the Small Tract patents.



Drifting sand has been one of the geologic hazards impacting small tracts in the Palm Springs Area. Other small tracts in the California Desert Conservation Area have been subject to flooding and colluvial movement of unstable soils.

In and adjacent to small tract areas, tracts of varying size, e.g., 5 to 20 acres, were often reserved and set aside for a wide range of possible present and future recreation and/or public purposes. Uses such as schools, churches, community centers, water works, fire stations, playgrounds, picnic areas, and other rather specific uses were contemplated.

In review existing small tract classified areas, tracts identified for such purposes should be continued in such a designation for present/future use, unless it can be clearly shown that there is little or no likelihood of such future need. Close coordination with local planning officials will be required.

C. Categories of Small Tract Areas

Small Tracts have been patented in various manners over the years. This ranges from an isolated patent, perhaps to accommodate an occupancy, to areas where whole sections have been sold.

1. Blocked-up areas are those where the predominate ownership remains with the United States. In most cases, the patented land is needed for an existing or proposed use and the only proper, or perhaps legal basis for the transfer was under authority of the Small Tract Act. These areas usually do not pose a land management problem as the present use was fully considered at the time of disposal. Eventually, there should be no remaining classified land in this type area.

2. Heavily intermixed ownership areas are those where an active disposal program was not successful. Also included in these areas are terminated lease tracts. In this latter category are lands which were leased to individuals who either never met requirements for patent, or let the lease expire. There are many areas, particularly in Southern California and Southern Nevada where several townships (many thousands of acres) were offered for lease and/or sale under the Small Tract Act. Often only one-third to two-thirds of the area was transferred, leaving the remaining lands in public ownership. The resultant land ownership resembles a "checkerboard" or "shotgun" pattern. BLM management in these areas is extremely difficult. The areas are subject to continual trespass, most of which goes undetected by BLM. This ownership pattern also poses major problems for the private landowners in that there is a constant need for rights-of-way, property lines are difficult to establish, and perhaps most important, the lack of local tax base makes service from local Government very difficult to obtain. Usually there is no water or sewer service, roads remain primitive in nature, police and fire protection are practically non-existent, schools, shopping and other services are far removed. In these areas, BLM planning should give consideration to further disposal, consistent with needs for some continued public ownership and local Government plans.

3. Scattered remaining Federal ownership areas are those, similar to that described in "2" above, but where the land disposal activity was more successful. In these areas, the BLM still manages ten to twenty percent of the land, with the remainder in private ownership.

Some of the problems described above are prevalent in these areas, but not to the same degree. Careful planning will be required to insure that adequate land is reserved for public need -- parks, schools, disposal sites, fire and police stations, public access, utilities, etc. In these areas the BLM should endeavor to transfer Federal land to other ownership. BLM management is far too expensive and time consuming, if done properly, to retain the land in Federal ownership.

4. Pending Small Tract Act applications. Organic Act Directive No. 77-23, March 4, 1977, provided instructions for the disposition of all pending Small Tract Act applications. Except in those instances where there was current litigation affecting applications (in which case action was to be suspended), all applications were to be returned to the applicant unless vested rights had attached. Therefore, few such applications should be active within the Bureau. In one instance, there is a block of some 170 pending applications in the Las Vegas, Nevada, area which are awaiting final court action on conflicting mining claims before further action can be taken. The proposed plan for final disposition of these applications is, assuming the mining conflict is cleared, to offer the tracts to the applicants at direct sale under authority of Sec. 203 of FLPMA. If other similar situations exist, they, too, could be handled in this manner.

5. Existing Small Tract Act leases. Organic Act Directive No. 77-23, dated March 4, 1977, identified the required course of action for this situation. Many Small Tract Act leases were issued prior to

repeal of the Act, and such leases are valid until their expiration date (unless a breach of contract takes place). OAD 77-23, calls for use of Sec. 302 of FLPMA for lease renewal, if such action is appropriate. No lease can be renewed under authority of the Small Tract Act. In cases where there is a required need for the land for some purpose other than by a private party, or where the lease provided for no renewal, when the lease terminates, improvements should be removed by the lessee. In other cases, it may be appropriate to transfer title to the property, and this can be accomplished under authority of Sec. 203 of FLPMA. According to the 1976 Public Land Statistics, there are 121 leases covering 367 acres still in effect. There are diagrams attached in the appendix of this report which indicate the land ownership patterns described above (see Appendix D).

III. COURSE OF ACTION

A. Withdrawal Review Relationship

All States have conducted an inventory of existing withdrawals to be followed by a "withdrawal review". The definition of "withdrawal" as contained in Sec. 103(j) of FLPMA includes any "withholding of an area of Federal land from settlement, sale, location, or entry, under some or all of the general lands laws." Small Tract Act classifications fall into this category, therefore, the withdrawal inventory will identify the location and extent of Small Tract Act classifications, as these class-

ification segregate the land "from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof." (43 CFR 2731.2).

Unless Small Tract Act classifications are revoked prior to the process normal to withdrawal review, District Offices will evaluate the need to continue such classifications in the regular course of business.

B. Classification Review Process

The implementation of a small tract classification review process shall be considered within the lands activity planning procedure. The activity planning process should integrate the revocation of the small tract classifications into a sequential management scheme. Because the existing small tract classifications impose both a segregative effect, and reserve easements to private tracts, revocations of the small tract classifications outside a comprehensive lands activity plan could create land use conflicts, and preclude future management options on public lands currently classified.

The Lands Activity Plan is linked to an MFP decision. Small tract revocations, therefore, should be linked to the implementation of an MFP decision. The following guidance will integrate the incremental steps of small tract classification review into the framework of the Lands Activity Plan. On review actions outside an activity plan this

guidance will identify specific elements which should be included in a programmatic approach.

C. Lands Activity Planning

As described in the Lands Activity Planning Manual (2050) the principal components are as follows:

1. Prioritization (decision making process)
2. Introduction
3. Planned Actions
4. Environmental Assessment Record
5. Land Report
6. Program Cost Estimate
7. Inclusion in the Annual Work Plan

These key elements will be discussed specifically as they relate to the revocation of the small tract classifications and resolution of allied issues.

Key factors which should be considered when prioritizing Lands Activity Plans in relation to small tract classifications can be outlined as:

- A. Land Ownership patterns
- B. Public demand or needs within the small tract area.
- C. Trespass
- D. Other resource values.

These factors should be weighed in evaluating priority. Factors "B" and "C" tend to compound with time and should be evaluated and resolved prior to any revocation action.

Introductory material is described in the 2050 manual. The introduction should contain a narrative addressing specific issues unique to the small tract area. Problems and issues common to most small tract areas involve:

1. Ingress and egress over public land to privately owned tracts in the area (includes roads and utilities).
2. Unauthorized use or occupancy of public lands.
3. Reservation of public use and public purpose areas.

The introduction should set forth a concise description of the primary issues and/or conflicts to be resolved in the activity planning process. This section should also be used to identify the scope, purpose and need for the activity plan.

The Planned Actions component will integrate the classification review and revocation actions into the activity plan. The revocation of small tract classification is tied closely to such factors as the permanent reservation of easements to patented small tracts, and the clearance of trespass. In revoking classification orders, or otherwise disposing of public lands, the Bureau must assure that access for roads and utilities is reserved to patented small tracts.

The revocation of small tract classifications involves the opening of lands to filing of applications under the public lands laws, including locations under the mining law.

The relative probability of impacts which could occur from filing of public demand applications and location under the mining law should be the primary point of analysis in the environmental assessment record. Obviously small parcels would not lend themselves to desert land or Indian allotment entry. Impacts (primarily socio-economic) resulting from the revocation of the small tract classification should be an additional element of analysis in the EAR that must receive thoughtful analysis.

The Land Report should include recommendations pointed toward resolution of these issues and/or actions:

1. Prescribe methods for the resolution of trespasses.
2. Provide for the identification of existing and potential right-of-way uses on public land in the small tract areas and specific recommendations to assure continued access.
3. Provide for the revocation of existing small tract classifications.
4. Provide for the reservation of land for public purpose needs.

5. Provide for the retention in Federal ownership of tracts having unique or critical resource values.

6. Recommend future land disposition (exchanges, sales, permits, leases) in the small tract areas.

Existing classifications could be revoked without further review by implementing the recommendations in the land report. The cost associated with the revocation action should be identified and coordinated within the sequential actions prescribed in the activity planning process.

Timing of the revocation of the small tract classification should be prescribed in the Lands Activity Plan. Annual Work Plan should provide for planning revocation actions consistent with the time table set forth in the activity plan.

Forms and guidance provided in the 2050 BLM Manual (Lands Activity Planning) should be referenced in developing this phase of the small tract review. (see Appendix C for sample revocation orders.)

IV. QUESTIONS AND ANSWERS

1. What could the lifting of a Small Tract Classification order do to the access situation of owners of patented small tracts?

Answer: In accordance with the Regional Solicitor's opinion of April 2, 1979, legal access or "a right of use" exists over public lands for access to the private property as is identified in the small tract classification order (see Appendix B).

2. What circumstances, if any, would justify the retention of all or a portion of a small tract classification?

Answer: Since the Small Tract Act has been repealed, classifications should be removed.

3. Should we remove the classification on the patented as well as the unpatented lands?

Answer: Yes, the whole classification should be lifted.

4. Does the lifting of the Small Tract Classification on the patented lands have any effect on the segregated mineral estate?

Answer: No, because the land was patented under the Small Tract Act and the minerals were reserved to the U.S.

5. Can the current owners of record of the patented Small Tracts purchase the mineral estates under FLPMA (Sec. 209)?

Answer: Yes, the current owners can apply under FLPMA to purchase the mineral estate.

6. For revocation purposes, should we publish only those Small Tract Orders that were originally published in the Federal Register?

Answer: It is current policy to publicize notices of revocation for both published and unpublished small tract orders in the Federal Register to maximize public notice. Publication (or press release) in a local newspaper may be worthwhile to assure local public notification.

7. If mining claims are found on classified small tract areas, what procedure should be followed?

Answer: If the location date is subsequent to the date of the classification, the claim is null and void. When the classification order is revoked and the land is opened to mining location, the mining claimant would have the opportunity to relocate at that time.

8. Should small tract parcels to be offered for sale (Sec. 203 FLPMA) be limited to the usual 2 1/2 to 5 acre size?

Answer: Most tracts should be offered in a size which is compatible to the neighborhood. This could vary from 1 1/4 to 5 acres. Care should be taken to avoid costly survey prior to sale. In an area suitable for subdivision development, consideration should be given to offering some parcels in 10 to 40 acre sizes to afford the opportunity for such development.

9. In view of the repeal of the Small Tract Act, are lands included in Small Tract Act orders still segregated?

Answer: The classification and accompanying segregation, continue until revoked, even though the Act has been repealed. (see Regional Solicitor's opinion, 4/2/79 Appendix B).

10. When an existing (or proposed) access road does not follow the right-of-way reservation identified in the classification order, how is such a road legalized?

Answer: Application must be made under the provision of Title V, FLPMA.

11. What is the effect of a classification and Multiple Use Act (78 Stat. 986, 43 USC 1411-18) retention classification made on land that has been classified for disposition for small tract purposes?

Answer: Unless the retention classification specifically provided for the revocation of the small tract classification order, the classification and the segregative effects imposed by the order remain undisturbed.

12. What action should be taken when an unauthorized use, e.g. occupancy, right-of-way, commercial, agriculture, etc., is discovered on an unsold small tract?

Answer: Prepare a trespass report in accordance with manual procedures in BLM Manual 9230. Determine course of action to terminate the trespass either by legalizing or eliminating the unauthorized use.

13. What steps should be taken in the event that field examination of a small tract area discloses that a small tract owner has constructed improvements on an adjoining unsold small tract?

Answer: Upon confirmation that improvements have been placed on an unsold tract, the problem may be resolved by sale of the tract under section 203 of FLPMA, or if the problem is due to an error in legal description in a patent previously issued to the owner, it may be corrected under Section 316 of FLPMA. If the improvements interfere with a Bureau's resource management program, the owner will be requested to remove the improvements. (See Appendix E).

14. When should sales be scheduled in areas of intermingled ownership?

Answer: Assuming that sales will be made under authority of Sec. 203 of FLPMA (rather than leasing), no sale can proceed until the land use planning requirements of FLPMA are met. Usually this will be a completed Resource Management Plan prepared by BLM. In some instances, City or County plans may be adequate where RMP's are not complete. However, before any areas are considered for sale, close coordination with local Government must be accomplished. This is to insure that there

are adequate zoning ordinances, building codes, and identification of public needs such as rights-of-ways and public purpose sites. Further sales in areas where adequate controls are lacking should not be considered.

15. What type of covenants should be included with sale tracts?

Answer: Generally, there should be few if any restrictions in the patent. An exception would be right-of-way reservations. A title should be as clear as possible to avoid unnecessary -- and sometimes impossible -- compliance effort by Bureau personnel. Depend upon local codes and ordinances to accomplish desired development. Lacking adequate local control, do not sell.

Appendix A
Bureau Resources Evaluations,
California and Nevada





United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

1241 (320)

Memorandum

AUG 24 1978

To: State Directors, Nevada and California ✓

From: Director

Subject: Development of a Current Program to Review Existing Small Tract Classifications

Worksheet No. 16 of the May 15-26, 1978, Nevada Resources Evaluation (copy enclosed) identified the need to develop a program to review existing small tract classifications.

Several hundred thousand acres may be involved. The worksheet identifies some of the associated problems. Additionally there are enclosed 3 copies of pages 10 and 11 from this year's Nevada Lands and Minerals Workshop which addresses the problem of easements (access) in and to small tract areas. It is the recommendation of the evaluation, and we concur, that a small team be formed to (1) review the situation on the ground, and (2) develop a program containing short- and long-term actions to be taken to reduce classified acreages to a bare minimum.

Based on his many years of experience on small tract issues, we suggest that ~~Harry Mize~~ of the California State Office be designated as the study leader, with a representative from the Riverside and Las Vegas Districts assisting. A Washington Office (320) staff person should also participate since this problem is Bureauwide (though confined primarily to California and Nevada). If this approach is agreeable, the 320 staff will be in touch with Mr. Mize to work out details of the analysis.

Arnold E. Petty
Acting Associate

Enclosures

cc: DM, Las Vegas, Nevada
DM, Riverside, California

To:	
LSD	8/23
ASD	
FMS	
DMES	
ITS	
FPA	
FPCS	
DES	
Action by	3
Summary	
Priority	9/8

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

EVALUATION WORKSHEET

Date	3/15-16/78	Work Sheet Number	16
Office Evaluated	Nevada		
Type of Evaluation	Resource Management		
By (office)	Washington Office		

Worksheet Subject
Development of a Current Program to Review Existing Small Tract Classifications

Findings

FLPMA repealed the Small Tract Act. Several hundred thousand acres are still ~~also~~ classified under that Act Bureau-wide. The passage of FLPMA, more particularly Section 204(a), mandates that BLN, not only in Nevada, but Bureau-wide, review the segregative effect of several hundred thousand acres of classified small tract areas. Numerous questions need to be addressed such as: (1) with the repeal of the Small Tract Act (Title VII of FLPMA), does the classification continue indefinitely? (2) does the segregation provided under the Small Tract Act continue indefinitely? (3) how can permanent public access to patented small tracts be maintained? (4) should a general program of revoking small tract classification orders be initiated, and if so, what stages and steps are necessary?

In Nevada, there are about 38,000 acres of land classified under the Small Tract Act. To date 44,611 acres have been patented, leaving about 43,633 acres that must be considered in a review program.

Recommendations

Establish a small Nevada/California ^{1/} Study Team to address the many ramifications of how to deal with this very complex issue.

^{1/} Calif. Resource Evaluation of May 9, 1977, worksheet #6.

APPROVAL REVIEWING OFFICER	Title AD, Resources	Signature <i>[Handwritten Signature]</i>	Date <i>[Handwritten Date]</i>	Encl. 1-51
Assigned to (office)		IMPLEMENTATION		Response Date

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

EVALUATION ACTION REPORT

Evaluation Date	April 3, 1979
Office Evaluated	Nevada/California
Evaluation Category	Resource Management
By Whom	Washington Office

Subject: Development of a Current Program to Review Existing Small Tract Classifications

RESPONSE AND OR ACTION TAKEN

The Division of Lands and Realty (DLO) has prepared a memorandum to State Directors Nevada/California recommending that a study team be formed. It was recommended that Harry Miwa of the California State Office be appointed team leader with a representative of the Riverside and Las Vegas Districts participating. The Washington Office will be represented by a staff person from the Division of Lands and Realty since this is a Bureau-wide problem.

Hopefully, this analysis could be accommodated during FY 1979. If not it will have to be scheduled formally for FY 1980.

OK 4/23/79

Encl. 1-52

Action Officer Initials	Signature
RESPONSE REVIEW	FOLLOWUP REVIEW
Reviewer's Recommendation <input type="checkbox"/> Accept Response <input type="checkbox"/> Further Guidance Enclosed	Reviewer's Recommendation <input type="checkbox"/> Action Completed or Implemented <input type="checkbox"/> Additional Followup Required
Reviewer Name	Date
	Followup Reviewer

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

EVALUATION WORKSHEET

Date	May 9, 1977	Worksheet number	6
Office	California State Office		
Type of Evaluation	Resource Multi-program functional		
By (office)	Washington Office		
Activity	Lands		

Findings

Segregation by Classification

During the 1950's, over 300,000 acres of public land in California, particularly in the desert, were classified for sale or lease under the Small Tract Act. Much of this land is still in Federal ownership and is segregated from entry under the other public land laws, including the mining laws. Although the Small Tract program was suspended in 1963, most of these classifications are still in effect and act as "de facto" withdrawals. It is possible that additional land may have been segregated from mineral entry under the R&PP Act or the C&MU Act.

The Federal Land Policy and Management Act of 1976 reinforced the Departmental policy of withdrawing land only with Secretarial approval. It has long been BLM policy that when classification segregations are no longer needed for the purpose for which they were originally made they should be revoked. This has not been done in California.

As part of the Desert Plan, an inventory of withdrawals is being done, but no inventory of these classifications is included. It seems that if these classifications are not inventoried during this process, it will be necessary to go back and do the job over because they have the same effect as withdrawals.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

EVALUATION WORKSHEET

Date	Worksheet number
May 9, 1977	(continuation) 6a
Office	California State Office
Type of Evaluation	Resource Multi-program functional
By (office)	Washington Office
Activity	Lands

Recommendations

1. Develop a plan to review and revoke existing Small Tract classifications. If it is necessary to "protect" the land from entry under the mining laws, a withdrawal application should be filed.
2. A procedure be developed by the Assistant Director, Resources to review these classifications during the Bureau-wide withdrawal review program which is being implemented.

Encl. 1-54

FINAL REVIEWING OFFICER	Date JUL 7 1977	Signature Associate Director <i>George L. Stewart</i>
-------------------------	-----------------	--

FOLLOWUP

Assigned to (office)

1. State Director - California 2. AD- Resources

Assigned	Completion deadline (30 days)
Completed	Action officer

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

EVALUATION ACTION REPORT

Evaluation Date

May 9, 1977

Worksheet Number Ref.

6

Office Evaluated

California State Office

Evaluation (type)

Resource Multi-Program Functional

By (office)

Washington Office

Subject

Segregation by Classification

RESPONSE AND/OR ACTION TAKEN

CSO FY 1978 AWP directives request for District Managers to plan for review and revocation of existing small tract classifications. The directives also request review of R&PP classifications (lands not proposed for lease or sale) and of exchange reconveyances without opening stuce they also have the effect of de facto withdrawals.

Encl. 1-55

Author's Recommendation		Reviewer's Recommendation	
Accept Response		<input type="checkbox"/> Action Completed or Implemented <input type="checkbox"/> Additional Followup Required	
Further Guidance Enclosed		Followup Reviewer (name)	
Author (name)		Date	Date
[Signature]		4/15/77	

RESPONSE REVIEW

FOLLOWUP REVIEW

Signature

[Signature]

Date

8/30/77

Appendix B
BLM Reports on Status of
Small Tract Classifications

Encl. 1-56





United States Department of the Interior

IN REPLY REFER TO 1

2080 (931)

BUREAU OF LAND MANAGEMENT

ARIZONA STATE OFFICE
2400 VALLEY BANK CENTER
PHOENIX, ARIZONA 85073

January 11, 1982

Memorandum

To: State Director, California
From: State Director, Arizona
Subject: Small Tract Classification Review

The questions posed in your December 22, 1978 memo are answered below in the order in which they were asked.

1. The acreage in the public land statistics appear to be correct for Arizona.
2. All small tract classifications were cancelled between 1963 and 1965. No classified small tracts are available.
3. We have a few scattered parcels, remnants of the small tract classification, which were unsold. The main difficulty that has arisen is that where an unsold tract is located among sold tracts, the public easement does not exist across the public land. We are remedying the problem with right-of-way grants, when the occasion arises, to permit access to patented tracts.

At this time, we have not noticed any interest in the sale of unsold tracts. There does not appear to be any problem with unauthorized use or occupancies. Continuing BLM management has not been a problem since they consist of scattered and intermingled parcels among the patented tracts.

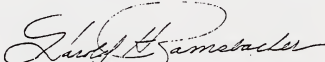
The biggest problem has been with tracts that are patented. The easements granted for public access/utilities on patented tracts are, in fact, granted to no one. They are more dedications rather than specific right-of-way grants. At the Apache Junction small tract area, problems have developed because the Pinal County Attorney adopted the position that the County has no jurisdiction over the easements. He said that the easements were created only for the benefit of the owner of the land across which that particular easement passes. He further said that to gain access to his homelote, the prospective homeowner would have to obtain quitclaims from all of the owners of lands along his desired access route. This has resulted

in the fencing off of some easements and the denial of access to owners located beyond.

The Bureau was contacted by the Apache Junction Chamber of Commerce and asked to delegate authority to Pinal County to administer these easements. We responded by telling them that based on the Field Solicitor's opinion, the BLM reserved no rights in these 33-foot-wide right-of-way. We only dedicated these corridors for roadway or public utilities uses to permit the purchasers of other tracts to have access and utilities to their land. In our opinion, the County and/or land owners and public utility companies have the right to construct roads and utilities within these dedicated right-of-way corridors to reach tracts that do not front on established public roads. We do not have the authority to issue permits or rights-of-way for road building or utilities construction within these zones, nor do we adjudicate disputes between land owners about the use or blockage of these zones. Disputes over the use of these dedicated access corridors must be settled between land owners or in court, if necessary.

4. We do not have any existing small tract classifications and therefore, are not faced with decisions to terminate or continue classifications.

5. The remaining scattered declassified small tract parcels are being managed as prescribed by decisions coming out of our on going planning system efforts. We believe this is the most practical way to best serve the general public interest.


Acting



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

COLORADO STATE OFFICE
ROOM 700, COLORADO STATE BANK BUILDING
1600 BROADWAY
DENVER, COLORADO 80202

IN REPLY REFER TO

CO-931
2730
2080

JAN 18 1979

22

TO	DATE	INITIALS
ASD	1/18/79	[Signature]
ASST		
RES		
TS	1/18/79	[Signature]
PA		
POS		
DES		
SEO		
Action by		[Signature]
Submitted by		
Return to		

Memorandum

To: State Director, California

From: State Director, Colorado

Subject: Special Study - Small Tract Classification - Colorado

A review of the small tract serial pages shows the acreage reported on page 89 of the Public Land statistics is substantially correct, 3,189 acres classified under the Act. Of this acreage, five small tract areas, 684 acres did not progress past the proposed decision. Additionally, two areas were classified but not opened, 388 acres. Since no lots were sold, the classification could be revoked and the land restored as to these seven specific small tract areas through the Bureau planning system.

Within the remaining twelve classified areas, approximately 300 acres, less than 175 lots, remain unsold. These areas generally have a common boundary with other BLM managed intermingled or well blocked lands. Given our manpower and funding limitations these lots are receiving only custodial attention.

No significant problems have developed with these scattered lots. An intensive on-the-ground inventory, including costly subdivisional cadastral survey, would undoubtedly surface some trespass, mostly in the form of roads, utility lines, outbuildings and junked/ discarded material items. There is no percentage in stirring up this can of worms until we are in a position in priority, manpower, funding, and regulations to tackle the problem.

The study should consider the impact of Washington Office IM No.79-21 concerning the amount and quality of analysis required in EA's and ES's in revocation/restoration actions, and the resultant manpower commitment. Most small tract areas would not meet the present subdivision standards and local governmental entities may well recommend retention in Federal ownership. The enclosed Pitkin County resolution regarding sale of a lot under the Unintentional Trespass Act illustrates some current County thinking.

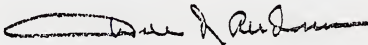


Encl. 1-59

Save Energy and You Serve America!

The small tract classifications are being inventoried and reviewed under section 204(1) of FLPMA. The inventory phase will be completed by the end of this FY. The review phase, in conjunction with land use planning activities called for by section 202(a) of FLPMA and lands activity planning should resolve the old small tract classification question. Through this process a plan would be developed for either management or disposal. We will not disturb the existing classifications absent completion of the above orderly steps.

The State applied for all the unsold lots in the Ptarmigan No. I and II small tract area in 1972 under Indemnity Selection C-17155, 91 tracts, 85.67 acres. The case has not been processed because of (1) a great disparity of value if valued as homesites, and (2) a question if indeed the state could in turn sell the lots as homesites due to size, zoning, and other county planning considerations.



Attachment

Memorandum

DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 Idaho State Office
 Boise, Idaho

IN REPLY REFER TO:
 2030 (952)

To : State Director, California
 FROM : State Director, Idaho
 SUBJECT : Small Tract Classification Review

Date: JAN 05 1979

In response to your memo dated December 22, 1978 regarding the Small Tract Classification situation in Idaho, the following responses to your questions are furnished in the order presented.

1. The acreage reported in Table 89 of the Public Land Statistis is a cumulative total of the areas classified during the years and in no way reflects the current situation. Many of these classified lands are currently in private ownership or the classifications have been vacated. We don't have a handle on the classification vacation actions over the years.
2. It is our belief that all areas classified for small tract are either leased, sold, or the classification vacated at the present time.
3. Not applicable.
4. Not applicable.
5. Not applicable.

We hope this information will be of assistance to you.

John L. Peterson

CD	IN	OUT	DET.
ASD			
MS			
RES			
ITS			
PA			
PCS			
DES			
Initiated by: <u>4</u>			
Reviewed by: _____			
Approved by: _____			

Encl. 1-61



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
222 North 32nd Street
P.O. Box 30157
Billings, Montana 59107

2080 (943.2)

JAN 30 1979

Memorandum

To: State Director, California (931.1)

From: State Director

Subject: Small Tract Classification - Review Program

This is in response to your memorandum of December 22, 1978. In our withdrawal review inventory, we addressed land classifications. This effort to date covers the State of Montana; we propose to initiate inventory in North and South Dakota during FY 1979.

Our data base is the current withdrawal inventory and other records. The answers to your questions are as follows:

1. We do not believe the acreage reported in Table 89 to be correct. We believe this is an accumulative figure over the years without reduction for acreage removed from classification.
2. It is our estimate that 46 (tracts) and 292.24 acres remain classified for small tract lease or sale in Montana and South Dakota, respectively. Active small tract leases contain 35.41 acres and 2.75 acres in Montana and South Dakota, respectively. We are unable, at this time, to fully establish the total acreage segregated from mining through reservations in patents.
3. Virtually all tracts are in areas of scattered remnant parcels of public lands. We have a definite problem of unauthorized occupancy, usually occurring in areas with a past history of mineral activity or recreational value. While not a major problem, these occupancies have required time consuming actions to correct. With neither manpower nor funding necessary to resolve the problem on a project basis, we are constrained to approach each occupancy on an individual case-by-case basis.

4. Our past small tract classifications were small in size and placed in specific areas. We feel that each classification should be screened through our planning system to retain any protection or continuity of use where needed.

5. No. We feel that FLPMA can adequately handle land transfer needs formerly accomplished under the Small Tract Act.

The toughest element in the process is the unknown acreage of patented small tract lands subject to mineral reservation. These reservations have the same impact as withdrawals with respect to mineral location.

Harmon Richards
Acting



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
NEW MEXICO STATE OFFICE
P. O. BOX 1442
SANTA FE, NEW MEXICO 87501

IN REPLY REFER TO

2000
943a-1

FEB 14 1979

Memorandum

To: State Director, California
From: State Director, New Mexico
Subject: Development of a Program to Review Small Tract Classifications

This is in reference to your memorandum dated December 22, 1978 requesting information pertaining to small tract classifications in our State.

The information that we have obtained is as follows:

1. The acreage reported in Table 89 of the Public Land Statistics is correct.
2. Yes, we have about 600 acres outstanding involving approximately 175 tracts.
3. Some of the unsold tracts are difficult to manage for one or several of the following reasons:
 - a. They are isolated tracts, completely surrounded by land in private ownership.
 - b. They are located among residential or commercial developments.
 - c. Unauthorized uses such as trash dumping, littering and ORV use occur on many of these tracts.
 - d. They are located in urban-suburban areas which are currently expanding.

Handwritten notes and a routing slip. The routing slip includes a grid with names and initials, and a large handwritten 'X' or '0' in the top right corner. The routing slip is titled 'Routing Slip' and has columns for 'To', 'By', and 'Date'.

Handwritten notes and a routing slip. The routing slip includes a grid with names and initials, and a large handwritten 'X' or '0' in the top right corner. The routing slip is titled 'Routing Slip' and has columns for 'To', 'By', and 'Date'.

Encl. 1-64

4. We recommend a blanket termination of the existing small tract classifications.

5. We have incorporated into the URA and plan to make recommendations in the MFP Step I that they be disposed of by sale, R&PP, etc.

Arthur W. Zimmerman



United States Department of the Interior

IN REPLY REFER TO

2080 (931)

BUREAU OF LAND MANAGEMENT
State Office
P. O. Box 1828
Cheyenne, Wyoming 82001

JAN 10 1979

TO	STATE
FROM	BLM
SUBJECT	STATE
DATE	12/22/78
BY	BLM
CLASS	BLM
OFFS	BLM
FIELD	BLM
ACTION BY	BLM
SURNAME BY	BLM
RETURN TO	BLM

Memorandum

To: State Director, California

From: State Director, Wyoming

Subject: Development of a Program to Review Small Tract Classifications

This is a response to the questions contained in your memorandum of December 22, 1978, as follows:

1. The total acreage reported in Table 89 of the Public Land Statistics is based upon figures which have been adjusted upward or downward for years whenever land has been classified or removed from classification. A recheck of previous actions would be necessary to verify absolute accuracy.
 2. Based upon a cursory examination of MTP's, we found 30 small tracts (150 acres), of which five are leased.
 3. These tracts are generally lands remaining after the small tract program of the 1950's. We have approximately 80 acres which are generally blocked out in an area of community expansion. The remainder are tracts intermingled among 5-acre lots which the Bureau sold. These also tend to be in an area of community expansion with one exception; lots left around Lake Hattie.
- We have not had many access problems associated with the remaining tracts. We do believe that those tracts in areas of community expansion should be sold. The tracts around Lake Hattie should be retained for public recreation and lake access.
4. The segregative effect should remain on those tracts needed for community expansion. Specific areas should be examined on a case-by-case basis during withdrawal review.
 5. Existing planning covering small tract areas either recommends retention or disposal reflecting the desires of local planning authorities.



Save Energy and You Serve America!

Gay Lee Thompson
ACTING

Encl. 1-66



United States Department of the Interior

IN REPLY REFER TO:

2080 (943.4)

BUREAU OF LAND MANAGEMENT

OREGON STATE OFFICE
P.O. Box 2965 1729 N.E. Oregon Street
Portland, Oregon 97208

JAN 11 1978

Mr. Tolson	
Mr. DeLoach	
Mr. Mohr	
Mr. Bishop	
Mr. Casper	
Mr. Callahan	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Sullivan	
Mr. Tavel	
Mr. Trotter	
Tele. Room	
Miss Holmes	
Miss Gandy	

Act: _____
Surr: _____
Return: _____

Memorandum

To: State Director, California ⁹³³ (933-1)

From: State Director, Oregon

Subject: Development of a Program to Review Small Tract Classifications

As requested by your memorandum dated December 22, 1978, the following information on small tract classifications is provided to assist the study team.

1. The small tract classification acreage reported in Table 89 of the FY 1976 Public Land Statistics is not correct for the States of Oregon and Washington. Most of the older classifications under the Small Tract Act were never posted to the public land status records and consequently, the master title plats do not reflect all of the existing small tract classifications. Some of the acreage originally classified for small tract lease or sale has since been classified and disposed of under other public land laws such as exchange, public sale, etc. It would be impossible to determine the actual acreage currently classified under the Small Tract Act.

2. We have identified several parcels of public land in Oregon and Washington that have not been disposed of and are still classified under the Small Tract Act. We estimate as follows:

<u>STATE</u>	<u>ACREAGE OUTSTANDING</u>	<u>NUMBER OF TRACTS</u>
Oregon	150	50
Washington	<u>175</u>	<u>70</u>
Totals	325	120

3. In the State of Washington, the land ownership pattern in the areas of unsold small tracts is generally intermingled with patented and unsold tracts. In Oregon, the unsold tracts are generally part of larger blocks of public land. Most of the small tracts in Oregon are currently leased under the Small Tract Act, and most could not be sold under the Small Tract Act because they are located on Revested O&C lands.

Mr. Tolson	
Mr. DeLoach	
Mr. Mohr	
Mr. Bishop	
Mr. Casper	
Mr. Callahan	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Sullivan	
Mr. Tavel	
Mr. Trotter	
Tele. Room	
Miss Holmes	
Miss Gandy	

2

ENCLOSURE

ENCLOSURE

We have received considerable public inquiry regarding the unsold small tracts in Washington, and because of the intermingled land pattern, such tracts do pose land management problems. In Oregon, we hope to eventually phase out most of the existing small tract leases and return the lands to public recreation or timber management uses. Many of the unsold tracts in Washington have also been classified for disposal by land exchange or R&PP sale; however, no disposal action is currently pending.

4. The Small Tract Act was repealed by Section 702 of FLPMA; therefore, the existing small tract classifications actually have no effect and should be terminated. It can be argued that the segregative effect of small tract classifications did not extend beyond the enactment of FLPMA. Since we cannot identify all the lands under small tract classification in Oregon and Washington, we recommend that each BLM State Office publish a blanket termination notice in the Federal Register that would terminate all small tract classifications without identifying land descriptions.

5. We have not developed or implemented any plans for either management or disposal of the existing small tracts with the exception of the plans identified in paragraph No. 3 above.

E. J. Petersen

ACTING



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
UTAH STATE OFFICE
136 E. SOUTH TEMPLE
SALT LAKE CITY, UTAH 84111

2091
(U-942)

FEB 7 1979

TO	INITIAL	DATE
✓ SD	✓	2/7
✓ ASST		
MS		
✓ RES		
✓ TS		
✓ PA		
POS		
DES		
SEO		
Approved by	3/4	
Executed by		
Returned to		

Memorandum

To: State Director, California
Associate

From: State Director, Utah

Subject: Small Tract Classification Review Program

In response to your memorandum of December 22, 1978, we have reviewed our records pertaining to classification and sale of land under the Small Tract Act of 1938 (52 Stat. 609) and answer your questions in order as follows:

- The acreage figure reported in Table 89 of the Public Land Statistics for 1975 is incorrect. Most of the land classified and not sold was selected by the State of Utah.
- According to our records we have approximately 800 acres classified for disposition under the Small Tract Act consisting of approximately 160 tracts not sold.
- The unsold tracts, in one block, are located in Glen Canyon City. The surrounding area is for the most part vacant public land. The Kaiparowits Power Project Withdrawal and the Bureau of Reclamation Withdrawal are being processed for revocation. We are not aware of any major problems other than the usual problems where unsold tracts are intermingled with tracts that have passed to private ownership. Other priorities have prevented a close examination of any possible trespass or other problems.
- We feel that these small tract classifications should be terminated. We have asked the Director to consider whether or not these classifications were superseded by classifications made under the Classification and Multiple Use Act. We have not yet received his answer.
- Because of the relatively small amount of acreage involved, the lack of any major problems, and the pressure of higher priority ^{options} we have not implemented any plans for either management or disposal of these existing tracts.

*Sorry - we're late - we'll try
to handle next time!!*

William S. Jewell



Save Energy and You Serve America!

Encl. 1-69



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Folsom District Office
63 Natoma Street
Folsom, California 95630

IN REPLY REFER TO

2080

C-042.2

JAN 17 1979

Memorandum

To: State Director, California (C-931.1)
From: District Manager, Folsom
Subject: Response to State Director memorandum of 12/22/78
on small tract classifications

The Folsom District has 10-12 undisposed tracts of public land that are covered by a Small Tract classification. The total acreage involved is about 45-50 acres. The acreage is not large enough to cause any significant management problems. The subject land consists of small isolated parcels varying from 2½ acres in size to 15 acres. They are suitable for disposal and would likely be sold via public sale someday. In view of the repeal of the Small Tract Act, it appears appropriate to have the classifications lifted.

H W Riecher Acting



Save Energy and You Serve America!

Encl. 1-70

Memorandum

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Ukiah District Office
P. O. Box 940
Ukiah, California 95482

IN REPLY REFER TO:
2080

To : State Director (C-931.1)
FROM : District Manager, Ukiah
SUBJECT: Small Tract Review Program

Date: JAN 03 1977

In response to your phone instruction, we are responding to the five questions that are listed in your memorandum of December 22nd.

1. N/A. The acreage is reported as a state's total.
2. This District has one 5-acre tract currently classified.

3. The tract is located less than two miles west by southwest of the Cobb Mountain resort area. Specifically, the property is on the eastern edge of the geothermal development area. At the October lease sale, the adjacent western property was leased. Property ownership is mixed, i.e., private, state and federal.

Residential development is outside though nearby the steam field. Federal ownership comprises properties of 80 to several hundred acres. The classified tract is part of an 80 acre property.

The classification segregation poses no management problem. Accordingly, we plan declassification action on a program basis, i.e., when the existing URA-MFP is revised pursuant to FLPMA.

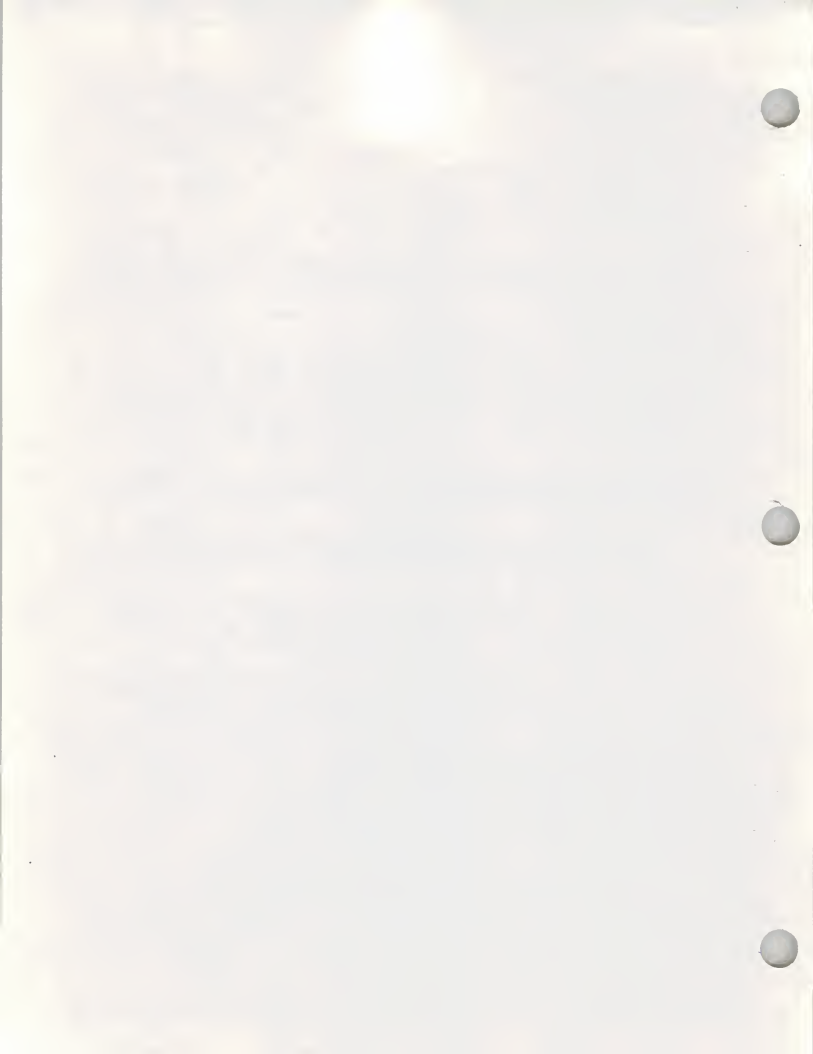
4. The revision of an URA - MFP pursuant to FLPMA provides the prudent basis for withdrawal review. It should be synchronized with the schedule to revise URAs - MFPs, recognizing that the withdrawal review program has 15 years for completion and that both are congressionally mandated.

This approach is believed of greater merit where intense land use conflicts exist in heavily populated areas. If further segregation protection from the 1872 Mining Law is identified and justified via the new planning endeavor, a regular withdrawal can be made before the classification is removed. As classification is a BLM segregation, it should not be as difficult to resolve under the review program as withdrawals under other agencies administration. The approach also insures that any future disposal regardless of purpose and type is justified by current planning and management decisions.

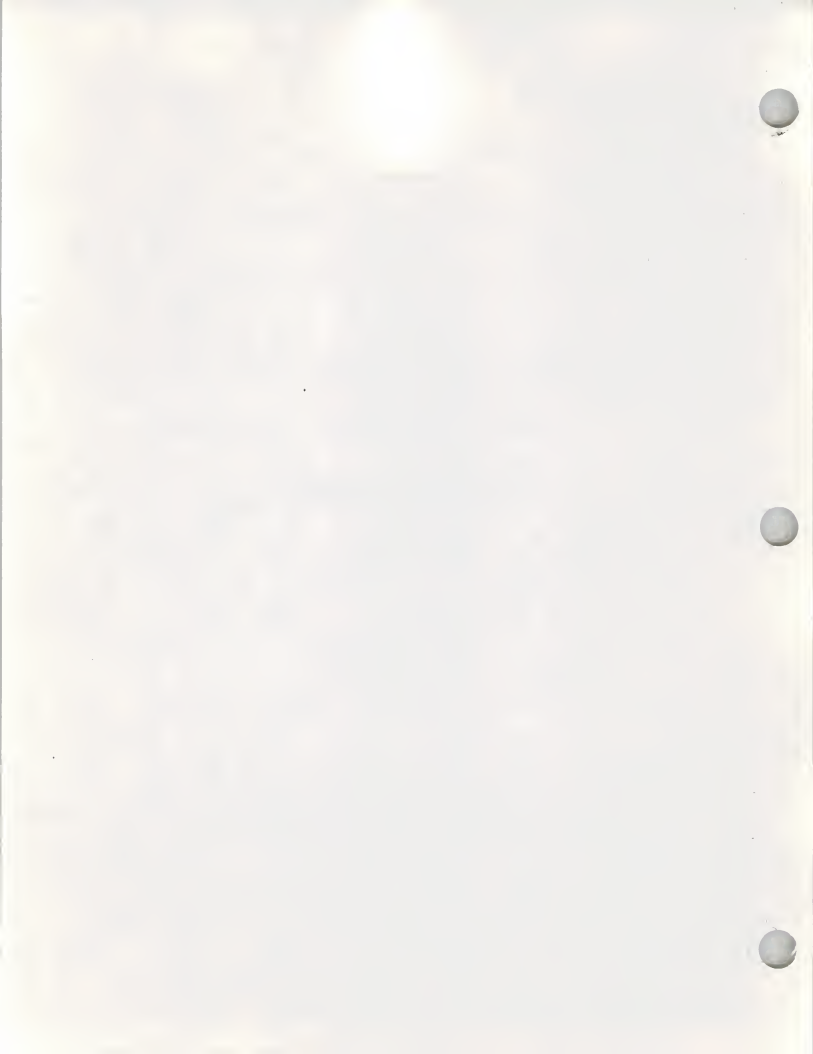
5. We have no plan other than the one identified above in questions 3 and 4.

Dennis Stephens

Encl. 1-71



Appendix C
Sample Small Classifications
and Revocation Orders



UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Regional Office
San Francisco, California

MAY 10 1952
MAY 16, 1952

CALIFORNIA

CLASSIFICATION ORDER

1. Pursuant to the authority delegated to me by the Director, Bureau of Land Management, by Order No. 427 dated August 16, 1950, I hereby classify under the Small Tract Act of June 1, 1938 (52 Stat. 609), as amended July 14, 1945 (59 Stat. 467, 43 U.S.C. 632a), as hereinafter indicated, the following described land in the Sacramento land district, embracing approximately 40 acres,

CALIFORNIA SMALL TRACT CLASSIFICATION NO. 335

FOR LEASE AND SALE for homesites only,

T. 6 N., R. 13 E., M.D.M.
Sec. 17, SE $\frac{1}{4}$ NE $\frac{1}{4}$

The land is situated in Calaveras County, California, in the foothills of the Sierra Nevada Range of Mountains. The nearest town is West Point, from which the land may be reached over oiled or dirt roads. The area is one that is used extensively for summer recreation and where cabin sites are in demand.

2. As to applications regularly filed prior to 2:00 p.m., April 8, 1952, and are for the type of site for which the land is classified, this order shall become effective upon the date it is signed.

3. This order shall not otherwise become effective to change the status of such lands until 10:00 a.m. on the 35th day after the date of this order. At that time the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to applications under the Small Tract Act as follows:

(a) Ninety-one day period for preference-right filings. For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order shall be subject only to application under the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U.S.C. 682a), as amended, by qualified veterans of World War II, subject to the requirements of applicable law. All applications filed under this paragraph either at or before 10:00 a.m. on the 35th day after the date of this order shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a.m. on the said 35th day shall be considered in the order of filing.

(b) Date for non-preference-right filings. Commencing at 10:00 a.m. on the 126th day after the date of this order, any lands remaining unappropriated shall become subject to disposal under the Small Tract Act only. All such applications filed either at or before 10:00 a.m. on the 126th day after the date of this order, shall be treated as though filed simultaneously at the hour specified on such 126th day. All

applications filed thereafter shall be considered in the order of filing.

4. A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in Section 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their application by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

5. All of the lands will be leased in tracts of approximately 5 acres, each being approximately 330 by 660 feet, the longer dimension to extend east and west in the N¹/₂SE¹/₄NE¹/₄ and north and south in the S¹/₂SE¹/₄NE¹/₄.

6. Preference right leases referred to in paragraph 2 will be issued for the land described in the application irrespective of the direction of the tract, provided the tract conforms to or is made to conform to the area and the dimension specified in paragraph 5.

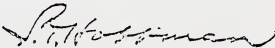
7. Where only one 5-acre tract in a 10-acre subdivision is embraced in a preference right application, an application

for the remaining 5-acre tract extending in the same direction will be accepted in order to fill out the subdivision notwithstanding the direction specified in paragraph 5.

8. Leases will be for a period of three years at an annual rental of \$5.00 payable for the entire lease period in advance of the issuance of the lease. Leases will contain an option to purchase clause at the appraised value of \$20.00 per acre. Application to purchase may be filed during the term of the lease but not more than 30 days prior to the expiration of one year from the date of the lease issuance.

9. Tracts will be subject to all existing rights-of-way and to rights-of-way not exceeding 33 feet in width along or near the edges thereof for road purposes and public utilities. Such rights-of-way may be utilized by the Federal Government, or the State, County or municipality in which the tract is situated, or by any agency thereof. The rights-of-way may, in the discretion of the authorized officer of the Bureau of Land Management, be definitely located prior to the issuance of the patent. If not so located, they may be subject to location after patent is issued.

10. All inquiries relating to these lands should be addressed to the Manager, Sacramento Land Office, Sacramento, California.



L. T. Hoffman
Regional Administrator



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
STATE OFFICE
California Fruit Building - Room 801
4th and J Streets
Sacramento 14, California

NOV 10 1959

SMALL TRACT CLASSIFICATION ORDER

CALIFORNIA NO. 580

1. Pursuant to the authority delegated to me by the California State Supervisor, Bureau of Land Management, under Part 11, Document 4, California State Office, dated November 19, 1954 (19 F.R. 7697), I hereby classify under the Small Tract Act of June 1, 1938, (52 Stat. 609, 43 USC 682a), as amended, the public land in Calaveras County, California, described below, for direct sale:

MOUNT DIABLO MERIDIAN

T. 6 N., R. 13 E.,

Section 2: Lots described in
paragraph 3Containing 18.38 acres subdivided into
4 tracts

Classification is made for the benefit of the small tract applicants whose applications were of record on the date of classification.

2. Classification of the above described land by this order segregates it from all appropriations including location under the mining laws, except as to applications under the Small Tract Act and applications under the Mineral Leasing Laws.

3. The tracts are described by lot numbers as designated by an official supplemental plat approved October 17, 1958 and filed in the Sacramento Land Office December 18, 1958. The appraised value of each tract is as follows:

<u>Serial No.</u>	<u>Lot No.</u>	<u>Acres</u>	<u>Appraised Price</u>
047725	22	5.00	\$1,000.00
v 047790	23	5.00	1,000.00
- 051709	36	3.18	1,000.00
047603	38	5.20	1,000.00

Encl. 1-77

*Noted 11/13/59
E. B. ...*

4. Patents when issued will be subject to all existing rights-of-way, and Lot 23 will be subject to a 33 foot right-of-way along the south boundary. Patent will reserve all mineral rights to the United States.

5. Inquiries concerning this land should be addressed to the Manager, Land Office, Room 1000, California Fruit Building, 4th and J Streets, Sacramento 14, California.

R. G. Spafleder
R. G. Spafleder
Officer-in-Charge
Northern Field Group
Sacramento, California



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
DISTRICT OFFICE
223 Chester Avenue
Bakersfield, California

L-10

CLASSIFICATION NO., C-1-2

*document in
C-1-150*

CALIFORNIA

SMALL TRACT CLASSIFICATION

1. Pursuant to authority delegated to me by the California State Director, Bureau of Land Management, under Part 1, Redelegation of Authority, dated March 27, 1962, (27 F.R. 3297), I hereby classify the following described public lands totalling 2.5 acres in Kern County, California as suitable for direct sale under the Small Tract Act of June 1, 1938 (52 Stat 609; 43 U.S.C. 682a), as amended:

MOUNT Diablo PRINCIPAL MERIDIAN

T. 26 S., R. 33 E.,

Sec. 29, SE1/4NW1/4SE1

Classification is made for the benefit of the small tract applicant whose application was of record on the date of classification.

2. Classification of the above described land by this order segregates it from all forms of appropriation, including location under the mining law, except as to applications under the mineral leasing laws.

3. The tract is rectangular in shape and contains 2.5 acres. The appraised value of the tract is \$400.00. The tract will be subject to all existing rights-of-way and to rights-of-way of thirty-three feet along all boundaries for road purposes and public utilities. All minerals will be reserved to the United States.

4. The tract will be offered at direct sale to the applicant under Los Angeles 0141433, who is entitled to statutory preference under 43 CFR 257.5(a). In the event the applicant entitled to such preference does not exercise this preference, the tract will be offered at direct sale at public auction by the Manager, Land Office, 1414 - 8th Street, Riverside, California.

Eldon F. Holmes
District Manager

Dated: _____

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Classification No. 563]

CALIFORNIA

SMALL TRACT CLASSIFICATION; AMENDMENT

NOVEMBER 12, 1957.

Pursuant to authority delegated to me by the California State Supervisor, Bureau of Land Management, under Part II, Document 4, California State Office, dated November 19, 1954 (19 P. R. 7697), the following described lands listed in paragraph 1 of Federal Register Document 57-4460 appearing on page 3895 of the issue for June 4, 1957, are hereby revoked from the classification order:

SAM BERNARDINO MEADIAN

T. 3 N., R. 3 E.

Sec. 2, E $\frac{1}{2}$, E $\frac{1}{2}$ -SW $\frac{1}{4}$.

T. 3 N., R. 4 E.

Sec. 4, NE $\frac{1}{4}$.

T. 4 N., R. 3 E.

Sec. 14, S $\frac{1}{2}$ SE $\frac{1}{4}$;Sec. 22, W $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$;Sec. 22, SE $\frac{1}{4}$;Sec. 24, N $\frac{1}{2}$ SE $\frac{1}{4}$;Sec. 35, E $\frac{1}{2}$ E $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$.

ROLLA E. CHAVLIZ,
 Officer-in-Charge, Southern
 Field Group, Los Angeles,
 California.

[P. R. Doc. 57-2425; Filed, Nov. 20, 1957;
 8:47 a. m.]



United States Department of the Interior

IN REPLY REFER TO

BUREAU OF LAND MANAGEMENT

Folsom District Office
63 Natoma Street
Folsom, CA 95630

C4-R2
S-5088
S-5089
2913

SMALL TRACT REVOCATION ORDER

California Classification Orders C4-372 and C4-373

1. Pursuant to the authority delegated to me by the California State Director, Bureau of Land Management, Under Part 1, Redelegation of Authority, dated August 11, 1967 (32 F.R. 11647), I hereby revoke Small Tract Classification Orders C4-372 and C4-373 dated January 20, 1972, in their entirety and effective immediately. The subject orders cover the following described lands:

Mount Diablo Meridian, California

C4-372

T. 17 N., R. 9 E.,

Sec. 7: A portion of Lot 11 described as:

Beginning at a point on the line between Secs. 7 & 18, from which the $\frac{1}{4}$ Cor., Secs. 7 & 18, as set by L.S. 2202, lies 200 ft. W.; thence from said point of beginning E. 180' to the SE Cor. of the property described; thence N. 200' to the NE Cor.; thence W. 180' to the NW Cor.; thence S. 200' to the SW Cor. and point of beginning.

0.82 Acres, more or less

C4-373

T. 17 N., R. 9 E.,

Sec. 7, A portion of Lot 11 described as:

Beginning at a point on the line between Secs. 7 & 18, from which the $\frac{1}{4}$ Cor. Secs. 7 & 18 as set by L.S. 2202 lies approx. 1045' W.; thence from said point of beginning E. 100 ft. to the SE Cor. of the property described; thence N. 150 ft. to the NE Cor.; thence W. 100 ft. to the NW Cor.; thence S. 150 ft. to the SW Cor. and the point of beginning.

0.34 Acres, more or less

Encl. 1-82

CONSERVE
AMERICA'S
ENERGY



MTP
MTP

10-13.74
ms

Save Energy and You Serve America!

2. Leases issued under the Small Tract Act of June 1, 1938 (52 Stat. 609; U.S.C. 682a), as amended, have terminated by their terms. The occupants have removed or are removing from the national resource lands and classification for small tract use is no longer proper.



Alan P. Thomson
District Manager



United States Department of the Interior

IN REPLY REFER TO

BUREAU OF LAND MANAGEMENT

S 5089
2730 (C-943.1)

STATE OFFICE
Federal Office Building, Room E-2841
2800 Cottage Way
Sacramento, California 95825

OCT 16 1975

NOTICE OF TERMINATION OF THE SEGREGATION OF LANDS

The Bureau of Land Management, Department of the Interior has
revoked Small Tract Classification Order C4-373. Effective at
10:00 a.m. on NOV 19 1975, the segregation effect on the land
listed below will terminate:

T. 17 N., R. 9 E., M.D.M.
Sec. 7, A portion of Lot 11 described as:

Beginning at a point on the line between Secs. 7 and 18,
from which the $\frac{1}{4}$ Cor. Secs. 7 and 18 as set by L.S. 2202
lies approximately 1045' W.; thence from said point of beginning
E. 100 ft. to the SE Cor. of the property described; thence
N. 150 ft. to the NE Cor.; thence W. 100 ft. to the NW Cor.;
thence S. 150 ft. to the SW Cor. and the point of beginning.

0.34 Acres, more or less

OCT 29 1975

Date of Posting

Noting

Walter F. Holmes
Chief, Branch of Lands
and Minerals Operations

CONSERVE
AMERICA'S
ENERGY

Encl. 1-84

NOV 19 1975
10 40 20

CLASSIFICATION NO. 563
CALIFORNIA
SMALL TRACT CLASSIFICATION
PARTIAL REVOCATION

1. Effective immediately, the lands described below are hereby revoked from Small Tract Classification Order No. 563:

San Bernardino Meridian
T. 3 N., R. 3 E.,
Sec. 2: Lot B
Containing 1.82 acres.

2. The public lands affected by this order are hereby restored as of 10:00 a.m. on OCT 25 1963 to the operation of the public land laws, subject to any valid and existing rights, the provisions of existing withdrawals, and the requirements of applicable law, rules and regulations.

Jens C. Jensen
Acting District Manager



Appendix D
Sample - Typical Small Tract
Area Land Ownership Pattern



TOWNSHIP 22 SOUTH RANGE 61 EAST OF THE MOUNT DIABLO MERIDIAN, NEVADA

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

MTP
SUPPL Sec 7

INDEX TO SEGREGATED TRACTS

TRACT NO.	SECTION	TOWNSHIP	RANGE	MERIDIAN
1	1	22	61	EAST
2	1	22	61	EAST
3	1	22	61	EAST
4	1	22	61	EAST
5	1	22	61	EAST
6	1	22	61	EAST
7	1	22	61	EAST
8	1	22	61	EAST
9	1	22	61	EAST
10	1	22	61	EAST
11	1	22	61	EAST
12	1	22	61	EAST
13	1	22	61	EAST
14	1	22	61	EAST
15	1	22	61	EAST
16	1	22	61	EAST
17	1	22	61	EAST
18	1	22	61	EAST
19	1	22	61	EAST
20	1	22	61	EAST
21	1	22	61	EAST
22	1	22	61	EAST
23	1	22	61	EAST
24	1	22	61	EAST
25	1	22	61	EAST
26	1	22	61	EAST
27	1	22	61	EAST
28	1	22	61	EAST
29	1	22	61	EAST
30	1	22	61	EAST
31	1	22	61	EAST
32	1	22	61	EAST
33	1	22	61	EAST
34	1	22	61	EAST
35	1	22	61	EAST
36	1	22	61	EAST
37	1	22	61	EAST
38	1	22	61	EAST
39	1	22	61	EAST
40	1	22	61	EAST
41	1	22	61	EAST
42	1	22	61	EAST
43	1	22	61	EAST
44	1	22	61	EAST
45	1	22	61	EAST
46	1	22	61	EAST
47	1	22	61	EAST
48	1	22	61	EAST
49	1	22	61	EAST
50	1	22	61	EAST
51	1	22	61	EAST
52	1	22	61	EAST
53	1	22	61	EAST
54	1	22	61	EAST
55	1	22	61	EAST
56	1	22	61	EAST
57	1	22	61	EAST
58	1	22	61	EAST
59	1	22	61	EAST
60	1	22	61	EAST
61	1	22	61	EAST
62	1	22	61	EAST
63	1	22	61	EAST
64	1	22	61	EAST
65	1	22	61	EAST
66	1	22	61	EAST
67	1	22	61	EAST
68	1	22	61	EAST
69	1	22	61	EAST
70	1	22	61	EAST
71	1	22	61	EAST
72	1	22	61	EAST
73	1	22	61	EAST
74	1	22	61	EAST
75	1	22	61	EAST
76	1	22	61	EAST
77	1	22	61	EAST
78	1	22	61	EAST
79	1	22	61	EAST
80	1	22	61	EAST
81	1	22	61	EAST
82	1	22	61	EAST
83	1	22	61	EAST
84	1	22	61	EAST
85	1	22	61	EAST
86	1	22	61	EAST
87	1	22	61	EAST
88	1	22	61	EAST
89	1	22	61	EAST
90	1	22	61	EAST
91	1	22	61	EAST
92	1	22	61	EAST
93	1	22	61	EAST
94	1	22	61	EAST
95	1	22	61	EAST
96	1	22	61	EAST
97	1	22	61	EAST
98	1	22	61	EAST
99	1	22	61	EAST
100	1	22	61	EAST

FOR APPLICABLE EFFECTIVE PROVISIONS ON USE OF
UNDESIGNED AND UNDESIGNED PUBLIC UTILITIES
AND RAIL WATER RIGHTS OR OTHER PUBLIC PURPOSES
REFER TO INDEX OF AVAILABLE RIGHTS DOCUMENTS.

See APPENDIX B of MTP Supplement

Sample of Heavily In-
termixed Small Tract
Area

Section	Tract	Area
1	1	1.000
2	1	1.000
3	1	1.000
4	1	1.000
5	1	1.000
6	1	1.000
7	1	1.000
8	1	1.000
9	1	1.000
10	1	1.000
11	1	1.000
12	1	1.000
13	1	1.000
14	1	1.000
15	1	1.000
16	1	1.000
17	1	1.000
18	1	1.000
19	1	1.000
20	1	1.000
21	1	1.000
22	1	1.000
23	1	1.000
24	1	1.000
25	1	1.000
26	1	1.000
27	1	1.000
28	1	1.000
29	1	1.000
30	1	1.000
31	1	1.000
32	1	1.000
33	1	1.000
34	1	1.000
35	1	1.000
36	1	1.000
37	1	1.000
38	1	1.000
39	1	1.000
40	1	1.000
41	1	1.000
42	1	1.000
43	1	1.000
44	1	1.000
45	1	1.000
46	1	1.000
47	1	1.000
48	1	1.000
49	1	1.000
50	1	1.000
51	1	1.000
52	1	1.000
53	1	1.000
54	1	1.000
55	1	1.000
56	1	1.000
57	1	1.000
58	1	1.000
59	1	1.000
60	1	1.000
61	1	1.000
62	1	1.000
63	1	1.000
64	1	1.000
65	1	1.000
66	1	1.000
67	1	1.000
68	1	1.000
69	1	1.000
70	1	1.000
71	1	1.000
72	1	1.000
73	1	1.000
74	1	1.000
75	1	1.000
76	1	1.000
77	1	1.000
78	1	1.000
79	1	1.000
80	1	1.000
81	1	1.000
82	1	1.000
83	1	1.000
84	1	1.000
85	1	1.000
86	1	1.000
87	1	1.000
88	1	1.000
89	1	1.000
90	1	1.000
91	1	1.000
92	1	1.000
93	1	1.000
94	1	1.000
95	1	1.000
96	1	1.000
97	1	1.000
98	1	1.000
99	1	1.000
100	1	1.000



Apperidix E
Legal Opinions

Encl. 1-90





United States Department of the Interior
OFFICE OF THE SOLICITOR

SACRAMENTO REGION
2800 COTTAGE WAY
ROOM E-2753
SACRAMENTO, CALIFORNIA 95825

April 2, 1979

Memorandum

To: State Director, BLM, Nevada
From: Regional Solicitor
Subject: Small Tract Act Classifications

Your memorandum of March 8, 1979 presents certain questions regarding classifications made under the Small Tract Act, now repealed.

You first inquire as to whether the segregative effect of Small Tract Act classifications would continue in view of the Act's repeal. Section 701(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1701, et seq., provides as follows:

"All withdrawals, reservations, classifications, and designations in effect as of the date of the approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law."

I am of the opinion that the Small Tract classification remains as a valid classification until the subject land has been reclassified and it retains its segregative effect.

You next inquire as to the status of legal access across public lands to lands patented under the Small Tract Act if the Small Tract classifications are revoked or declassified. The regulations issued under the Small Tract Act provide that the classification order may provide for rights-of-way and if the classification order does not so provide the right-of-way will be 50 feet along the boundaries of the tract. This provision

in the regulations was inserted clearly, for the mutual benefit of the Small Tract patentees and lessees, i.e. to give patentees and lessees the same ready access from area to area (see the opinion of the Associate Solicitor, Division of Public Lands, dated August 5, 1957, entitled "Elimination of a Right-of-Way Reservation from Patent", holding that the rights-of-way in connection with Small Tracts are common law dedications). Moreover, Part 5 of the Federal Land Policy and Management Act provides in § 509(a):

"Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title (43 U.S.C. § 1769)."

There can be no question that purchasers of Small Tracts did, in fact, rely upon the right-of-way provisions contained in the regulations and classification order providing them access to their lands. I am of the opinion that Small Tract patentees retain legal access or "a right-of-use" over the public lands identified in the classification order which provide legal access to their property. See also § 701(a) of the Federal Land Policy and Management Act which provides:

"Nothing in this Act or in any amendment made by this Act shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act."

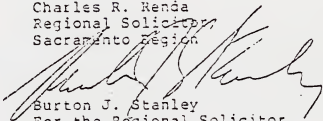
This right-of-use would also apply to utility companies servicing the patented Small Tract parcels.

You further inquire as to new construction of a road by a Small Tract Act patentee across public land and within the stated reservation for a right-of-way. Since the Small Tract patentee retains a right of access to his Small Tract, as provided in the classification order, new construction within the right-of-way would not require authorization from the Bureau.

In view of the fact that the rights-of-way provided in the Small Tract Act regulations, 43 U.S.C. § 2731.6-2, remain valid rights-of-way and are a common law dedication to the public, the remaining questions posed by your opinion request need not be considered at this time.

Should you have further questions regarding the Small Tract Act and the classifications thereunder, please advise.

Charles R. Renda
Regional Solicitor
Sacramento Region



Burton J. Stanley
For the Regional Solicitor

cc:
William Kelly, Division of Energy & Resources
State Director, BLM, CA



United States Department of the Interior
OFFICE OF THE SOLICITOR

SACRAMENTO REGION
2800 COTTAGE WAY
ROOM E-2733
SACRAMENTO, CALIFORNIA 95825

January 11, 1979

SI	Index	Date
ASD		
ASO		
ASD		
AMS		
RES		
IS		
IPA		
PCS		
SES		
Agency	3	
Category		
Priority		

Handwritten notes: "P. E." in the top left, "B" in the middle right, and "PAGES 1-12" written across the bottom right of the table.

Memorandum

To: State Director, BLM, CA

From: Regional Solicitor

Subject: Reservation of Rights-of-Way in Small Tract Classifications

Your memorandum of January 8, 1979 indicates that you are considering the revocation of the small tract classification on certain lands presently classified for disposal under the Small Tract Act, in view of the fact that the Act itself expired with the passage of the Federal Land Policy and Management Act of 1976. You have requested my opinion on the legal effect a revocation order would have on existing roads privately constructed and maintained, and public utility lines across vacant unsold tracts subject to the classification. You indicate that these uses have continued without a formal authorization in view of the fact that each small tract parcel sold would be subject to certain rights-of-way either established in the classification order or provided for by 43 CFR 2731.6-2. You further inquire as to whether users of unauthorized roads across the public lands would be allowed to continue their use without further authorization if the small tract classification was not revoked.

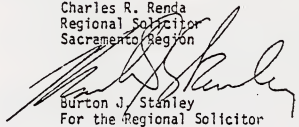
Under the fact situation presented, assuming that the Bureau did not construct the roads in question across unsold parcels classified for small tract disposal, I am of the opinion that privately constructed and maintained roads across vacant unsold public lands and public utility lines across said unsold lands would be in trespass unless authorized by the Bureau. The users should be required to file for a right-of-way under the Federal Land Policy and Management Act. The classification order, in and of itself, does not create a right-of-way. I am therefore of the opinion that the revocation of the small tract classification would have no effect on any rights which a user may have on the public land. Such uses must be authorized whether or not

Ttl		
1	1/11/79	1/11/79
	Div. of Plan.	
	Chief	
	Div. Dir.	
	Special Agent	
	Secretary	

Handwritten: "S. M." in the top right corner of the routing slip.

the land is subject to the small tract classification. I concur in your belief that termination of the small tract classification will have no adverse effect on existing roads and public utility lines over patented tracts that were constructed within the right-of-way expressly provided in the patent reservation.

Charles R. Renda
Regional Solicitor
Sacramento Region



Burton J. Stanley
For the Regional Solicitor



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
300 NORTH LOS ANGELES STREET, ROOM 7759
LOS ANGELES, CALIFORNIA 90012

1	ASRS
2	ASD
	PES. 12
	ASD
	OP
	SSD
	STD
	HD
	ED

July 22, 1968

Action
Return to:

Memorandum

To: Manager, District and Land Office
Bureau of Land Management, Riverside, California

From: Regional Solicitor, Los Angeles Region

Subject: Rights-of-way in connection with small tracts

Your office has requested our opinion as to whether the rights-of-way in connection with lands classified for small tracts under the Act of June 1, 1938, as amended, 63 Stat. 239, 43 U.S.C. 623(b)(1964), but not patented, may be used for the construction of roads and public utilities without the necessity of a formal grant by your office for the purpose.

The Associate Solicitor, Division of Public Lands, in a memorandum opinion to the Director, Bureau of Land Management, dated August 5, 1957, subject: "Elimination of a Right-of-Way Reservation from Patent", held that the rights-of-way in connection with small tracts are common-law dedications. It is stated in that opinion in applicable part, as follows:

"The reservation undoubtedly stems from a similar provision in Form 4-775, the small tract lease form issued under the same statute. Back as far as 1945, the lease form contained this provision to allow ingress to and egress from the area of the tract along the boundary lines. The Commissioner of the General Land Office was authorized to make the final decision as to the location of the right-of-way whenever necessary. In 1949, the lease form specifically provided for a maximum 33-foot right-of-way. This provision was included in the form adopted in 1950 when the regulations first provided for an option to purchase the lands under lease. Circular 1764, September 11, 1950, 43 CFR, 1954 ed. 257.16(c), since revised by Circular 1859, January 15, 1955, 43 CFR 1954 ed. Cum. Supp. 257.17(b).

Encl. 1-97

"This provision in the small tract lease form was inserted, clearly, for the mutual benefit of the lessees. It is equally clear that the identical provision was included in patents under the regulations which provided for sale as well as leasing of tracts under the Small Tract Act to give patentees the same ready access from area to area.

* * *

"No apparent 'public' purpose or governmental use was contemplated except to carry out the purposes of the Small Tract Act to provide for intensive utilization of the public lands. It was not intended to reserve rights to the United States. Compare Augusta G. Stanley, et al., A-26959 of November 15, 1954."

The current regulation pertaining to rights-of-way in connection with small tracts and which has been in force and effect since January 15, 1955, is stated in 43 CFR 2233.5(b)(1967), as follows:

"The classification order may provide for rights-of-way over each tract for street and road purposes and for public utilities. If the classification order does not so provide, the right-of-way will be 50 feet along the boundaries of the tract."

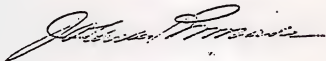
When land is patented under the Small Tract Act the whole of the tract is described in the patent subject to the right-of-way for roads and public utilities.

No particular formality is necessary to effect a common law dedication. The requisite intention may be established in almost any conceivable way. It may be shown by written instrument, by oral declaration of the owner or by some other explicit manifestation by the owner of his purpose to devote the property to public use. The intention may be implied from circumstances, or by acts or conduct of the owner which clearly indicate an intention to devote the land to public use or from which a reasonable inference of his intent may be drawn. 23 Am. Jur. 2d, Dedication, Section 21, page 19, and the cases cited therein. Under a common-law dedication fee title does not pass and the public acquires only an easement in the land designated for its use. Carter Oil Company v. Myers, 105 F.2d, 259 (1939). Even though a common-law dedication does not pass the legal title to the land out of the party making it, it is sufficient to defeat an action for the recovery of the property as against those who are using the land in accordance with the purpose for which it was dedicated. No obstruction of the subject of a dedication or encroachment on it by the dedicator or by anyone else will affect the dedication or impair the right of the public to its benefits, unless

the land so dedicated has been abandoned by the public or by proper authority pursuant to due course of law. 23 Am. Jur. 2d, Dedication, Section 60, page 53.

In our opinion the provision in 43 CFR 2233.5(b) that if the classification order does not provide for rights-of-way in connection with small tracts, the right-of-way will be 50 feet along the boundaries of the tract, is a clear and explicit manifestation on behalf of the United States to dedicate a portion of each small tract to public use. Accordingly, in light of the above discussion we believe that the rights-of-way in connection with classified but unpatented small tracts may be used for the construction of roads and public utilities, as is expressly stated in the regulation, to serve patented small tracts, without the necessity for your office making a formal grant for the purpose.

- - -

A handwritten signature in cursive script, appearing to read "John W. P. ...".



Appendix F
Sample Decisions on Small
Tract Cases





IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

RICHARD O. DALE ET AL.

IBLA 78-450

Decided December 6, 1978

Appeal from that portion of a decision of Montana State Office, Bureau of Land Management, requiring purchase money for small tract application M 23296.

Vacated and remanded.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act: Repealers--Small Tract Act: Generally

The Small Tract Act, as amended, 43 U.S.C. § 682a et seq. (1970) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, and no land may be purchased under this Act. Where a State Office decision approves an application for purchase of a tract of land filed pursuant to the Small Tract Act in order to correct an error in a land description in another patent previously issued to appellants under the Small Tract Act, the decision will be reversed and the case remanded to the State Office for determination of whether the original patent may be corrected under sec. 316 of FLPMA, Correction of Conveyance Documents, 43 U.S.C. § 1746 (1976).

APPEARANCES: Richard O. Dale, Claude O. Dale, Jr., Hal J. Dale, and Mary Dale Siprelle, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Richard O. Dale, Claude O. Dale, Jr., Hal J. Dale, and Mary Dale Siprelle have appealed from that portion of a decision of the Montana State Office, Bureau of Land Management (BLM), dated April 26, 1978, requiring them to pay \$5,000 for the purchase price of a small tract

31	Initials	Date
130		
140		
145		
2135		
215		
217		
208		
209		
210		
211		
212		
213		
214		
215		
216		
217		
218		
219		
220		
221		
222		
223		
224		
225		
226		
227		
228		
229		
230		
231		
232		
233		
234		
235		
236		
237		
238		
239		
240		
241		
242		
243		
244		
245		
246		
247		
248		
249		
250		

prior to preparation of the patent for the tract. The application for purchase (N 22296) of this tract was filed pursuant to the Small Tract Act of June 1, 1938 as amended, 43 U.S.C. 562a et seq. (1970).

In 1917 Claude O. Dale Sr., Cecil L. McClure (both deceased and predecessors-in-interest to appellants) and Richard O. Dale filed an application to purchase a small tract that had been the family homestead for approximately 50 years at that time. The Dale family also had a placer mining claim which embraced all of the buildings and improvements of the original homestead. In 1959 the Claude O. Dale family relinquished the mining claim. A patent was issued in 1965 for 5 acres of land now described as lot 11, sec. 3, T. 3 S., R. 5 W., Principal meridian, Montana. Appellant and BLM thought that all of the improvements were within the boundaries of the land which was patented.

In 1971, a mining company conducting mining and milling activities in the vicinity of the Dale family homestead had the area surveyed and found that some of the buildings and improvements were not included within the boundaries of lot 11. This was confirmed by a cadastral surveyor who examined the land.

On September 29, 1972, Richard O. Dale and Alice A. Dale filed an application N 22296 to purchase 2.50 acres of land under the Small Tract Act described as lot 10, sec. 3, T. 3 S., R. 5 W., Principal meridian, Montana, in order to give them patent to land which embraced the improvements outside of lot 11. This application was amended to name appellants as the applicants and to include 3.74 acres. The lot containing the improvements was subsequently described as lot 17. BLM issued a decision on April 25, 1973, approving appellants' application to purchase and stated that the purchase price for this tract is the appraised price amounting to \$5,000.

In their statement of reasons, appellants challenge BLM's appraisal of December 31, 1977. Appellants point to the fact that BLM caused an initial delay of several years by amending the application to include 3.74 acres instead of the 2.5 acres originally applied for.

Appellants argue that had it not been for an error in the land description, the matter would have been resolved at the time of the original approval of lot 11. Appellants note that the appraised value of the land was \$120 per acre at the time of the first transaction and state that it has taken 18 years to accomplish what BLM intended to do in 1960. Therefore, appellants reason that the additional 3.74 acres should be sold for \$468.00 rather than \$5,000.

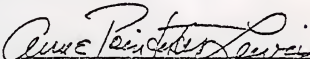
[1] The Small Tract Act, supra, was repealed by section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, effective October 21, 1976. Accordingly, BLM is not thereafter authorized to approve appellants' application to purchase a tract under the Small Tract Act, supra.

Section 316 of FLPMA provides that patents or documents of conveyance may be corrected. 43 U.S.C. § 1746 (1976), Correction of Conveyance documents, reads as follows:

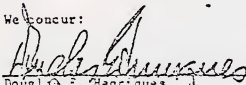
The Secretary may correct patents or documents of conveyance issued pursuant to section 1718 of this title or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands.

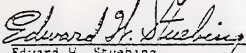
In light of this provision in FLPMA, we shall remand the case to the Montana State Office to determine if the land encompassing the improvements which were intended to be accommodated by patent 25-66-0023, issued November 4, 1965, can be included within five acres, not exceeding 330 feet east-west, and 660 feet north-south, so situated that 2-1/2 acres are within the east half of the present lot 11, and the remaining 2-1/2 acres, more or less, are in the westerly portion of lot 17. If the situation of the improvements on the ground meets this condition, the State Office is to determine if action to correct patent 25-66-0023 may be taken under section 316 of FLPMA, bearing in mind the limitations in the Small Tract Act under which the patent was issued. In view of our determination herein, we find it unnecessary to resolve the question of cost of the land in issue.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and remanded to the Montana State Office for consideration consistent with this opinion.


Anne Poindexter Lewis
Administrative Judge

We concur:


Douglas E. Henriques
Administrative Judge


Edward W. Stuebing
Administrative Judge



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

ARTHUR G. LANE, JR.

IBLA 78-406

Decided December 14, 1978

Appeal from decision of the California State Office, Bureau of Land Management, dismissing a protest against expiration of small tract lease S 4090.

Affirmed.

- 1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Repealers--Small Tract Act: Generally--Small Tract Act: Classification

The Small Tract Act, 43 U.S.C. § 682 a-e (1970), was repealed by sec. 702, Federal Land Policy and Management Act of 1976, Oct. 21, 1976, P.L. 94-579, 90 Stat. 2787. Renewal of a small tract lease was discretionary under the former Small Tract Act, so there was no right to renewal of a small tract lease preserved by sec. 701 of FLPMA. Any use or occupancy of the public domain granted subsequent to Oct. 21, 1976, must be under authority contained in FLPMA.

Administrative routing table with columns for 'TO' and 'INITIALS'. Rows include: ASD, ASD, MS, WRS, TS, PI, PCS, CES. Includes handwritten initials and a signature 'DWP'.

APPEARANCES: Arthur G. Lane, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Arthur G. Lane appeals from a decision of the California State Office, Bureau of Land Management (BLM), dismissing a protest against expiration of small tract lease S 4090.

The land in question, totaling approximately 0.60 acre in sec. 21, T. 4 S., R. 18 E., Mount Diablo meridian, Mariposa County, California, was classified as suitable for lease only for residential purposes under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682a et seq. (1970). Appellant filed an application for the small tract in November 1970 and the lease was issued effective December 1, 1970, for a 6-year period.

On January 11, 1978, BLM notified appellant that his lease had terminated by operation of law in November 1976 and that in accordance with the terms of the lease contract, he had 90 days from the termination date within which to remove his improvements.

Appellant filed a letter protesting the termination in which he asked for a 60-day extension of time in which to remove the improvements.

On April 18, 1978, BLM issued a decision amending its notice of January 11, 1978, to allow appellant to and including June 29, 1978, to remove his improvements from the premises. The decision noted that the record fails to disclose that an application for renewal of said lease was filed or that advance rental was paid for the use of the land from December 1976 through November 1977. Consequently the lease automatically terminated by operation of law at the expiration of its term. BLM explained that the subject land is within a large block of public land which was classified in 1970 for retention in Federal ownership for multiple use management. BLM stated that the land has been identified as valuable for wildlife habitat and management purposes, particularly that of the endangered limestone salamander. For these reasons, BLM concluded that a renewal application would not be considered and dismissed the protest.

In his statement of reasons filed May 5, 1978, appellant explains that each year he has received a notice that payment was due. He says that in 1976 he never received notice concerning renewal of the lease or notice that rental payment was due. As for the wildlife habitat, appellant points out that as long as he has been on the property, he has not hunted any wild animals or permitted others to do so. He contends that the area will not be a wildlife habitat for long because the entire area is "fringed by land development." Also, he says that he has not damaged the property and has, in fact, purchased and planted trees in the area. Appellant states that mineral rights were held by either himself or his family since 1946. Therefore, he alleges that either the mining claim rights or the small tract lease should be in effect.

[1] The Small Tract Act, supra, was repealed by section 702 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, effective October 21, 1976. Use or occupancy of public land granted subsequent to the effective date of FLPMA must be issued under authority of that Act. 43 U.S.C.A. § 1732(b) (Supp. 1978).

When the Small Tract Act, supra, was in effect, the issuance of such a lease was within the discretion of the Secretary of the Interior, Alva F. Muse, 30 IBLA 36 (1977). The classification of land as suitable for disposition under this Act did not preclude a subsequent cancellation of that classification when a different

classification was found to be in the public interest. Estate of Lyle K. Gross, 1 IBLA 79, 77 I.D. 174 (1970).

The land in issue is within a large block of public land classified in 1970 for retention in Federal ownership for multiple use management. BLM reports that the land has been identified as valuable for wildlife habitat and management purposes, particularly that of the endangered limestone salamander. BLM's refusal to renew the lease was predicated upon the finding that the public interest required such action in order to protect and preserve the endangered species of salamander living within the boundaries of this tract of land.

In these circumstances we find that, even if the Small Tract Act were still in effect, the refusal to renew the lease herein would have been within the delegated authority of the deciding official of BLM. Estate of Lyle K. Gross, supra. But, in view of the repeal of the Small Tract Act by FLPMA, BLM is not authorized to renew the lease. The lease itself provided that any renewal would be discretionary. Therefore, appellant has no valid existing right to a renewal lease which would survive FLPMA, 43 U.S.C.A. § 1701(h) (Supp. 1978). We note that on November 5, 1970, appellant signed a relinquishment of any right, title, or interest in the mining claim. Accordingly, there is no merit to his assertion that any of his rights to the mining claim are still outstanding.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Aime Poindexter Lewis
 Aime Poindexter Lewis
 Administrative Judge

We concur:

Douglas E. Henriques
 Douglas E. Henriques
 Administrative Judge

James L. Burski
 James L. Burski
 Administrative Judge



BUREAU OF LAND MANAGEMENT

Office
Denver, Colorado

BLM LIBRARY
RS 150A BLDG 50
DENVER FEDERAL CENTER
P.O. BOX 25047
DENVER, CO 80225