

**Full Performance Evaluation**

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**The Public Land Corporation**

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**The Public Land Corporation's Fee  
Structure is Out-Dated and Inadequate**

**The Standards Used by the PLC to Determine  
Fair Market Value are Not the Same as the  
Standards Required by State Law**

**Update of 2001 Recommendations**



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John Sylvia  
Director

August 22, 2004

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable J.D. Beane  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Full Performance Evaluation of the *Public Land Corporation*, which will be presented to the Joint Committee on Government Operations on Sunday, August 22, 2004. The issues covered herein are "The Public Land Corporation's Fee Structure is Out-Dated and Inadequate;" "The Standards Used by the PLC to Determine Fair Market Value are Not the Same as the Standards Required by State Law;" and "Update of 2001 Recommendations."

We transmitted a draft copy of the report to the Public Land Corporation on August 10, 2004. We held an Exit Conference with the Public Land Corporation on August 16, 2004. We received the agency response on August 16, 2004.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

JS/tlc

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*Joint Committee on Government and Finance*

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# Executive Summary

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## **Issue 1: The Public Land Corporation's Fee Structure is Out-Dated and Inadequate.**

The Public Land Corporation assesses fees for commercial access to the beds of the state's streams and rivers. Fees were set by the PLC's Board of Directors in 1968 and have not been adjusted since.

Fees are the PLC's primary revenue source. They were intended, in 1968, to reflect the PLC's administrative expenses as well as the value of the resources to which the PLC holds title. PLC is permitted by §20-1A-3(6) of the state Code to use fee revenue for the following purposes:

- Liquidate obligations incurred in the acquisition, development and administration of public lands until all such obligations have been fully discharged;
- Purchase, develop, restore and preserve for public use, sites, structures, objects and documents or prehistoric, historical, archaeological, recreational, architectural and cultural significance to the state of West Virginia;
- Obtain grants or matching funds available from the government of the United States or any of its instrumentalities for prehistoric, historic, archaeological, recreational, architectural and cultural purposes.

The lack of fee increases has limited the PLC's ability to engage in public preservation projects and contributes to an unstable budget.

Since 1968 the Board charged a \$100 Right of Entry fee. This fee allows commercial interests to enter river and stream beds with equipment. Technological advancements, since 1968, in the mineral extraction industry are not reflected in the fee structure. The only fee construct the PLC had to assess a fee for the burial of streams in mountaintop removal mining was the \$100 Right of Entry category. In addition, the PLC no longer charges private citizens, which represent 40% of the PLC's land use agreements. Also, comparisons to surrounding states indicate that West Virginia's fees may significantly less than Pennsylvania, Ohio, Virginia and Maryland. It is the opinion of the Legislative Auditor that the PLC needs to charge sufficient fees in order to fulfill its administrative responsibilities and engage in the preservation of public resources.

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## **Issue 2: The Standards Used by the PLC to Determine Fair Market Value are Not the Same as the Standards Required by State Law.**

West Virginia Code requires the Public Land Corporation to use the 1972 version of the Uniform Appraisal Standards for Public Land Acquisition. These federal standards have been updated since 1972 to reflect changes in federal law and procedures enacted in response to the savings and loan scandals. The current federal standards also mandate licensing and certification for real estate appraisers.

The PLC operates under the current federal standards, as referenced in Section 2.8 of Title 58, Series 2 of the Code of State Rules. The Legislative Auditor is concerned that the agency is at risk of litigation due to the inconsistency and believes the state code should reflect the updated federal standards.

## **Issue 3: Update of 2001 Recommendations**

PERD issued a report on the Public Land Corporation in September 2001 in which it identified one issue:

*The Cabawaylingo Coal Lease with Vantage Mining Corporation has Several Irregularities Indicating that the Lease should be Reevaluated or Possibly Voided.* PERD made four recommendations in response to the issue. The Public Land Corporation complied with one recommendation by promulgating rules during the 2004 regular legislative session. Due to the passage of H.B. 2512 during the 2003 legislative session, the Public Land Corporation rectified deficiencies identified in the report. However, the Public Land Corporation did not void the Cabwaylingo lease due to consensus with the Governor's Office that to do so would result in expensive litigation.

### **Recommendations**

1. *The PLC Board should develop an updated fee schedule which reflects the current value of resources and the administrative costs of services provided. Once approved by the Board, this schedule should be codified in legislative rules.*
2. *The Legislature should consider amending the code to reflect current and future versions of the federal standards.*



# Review Objective, Scope and Methodology

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This Full Performance Review of the West Virginia Department of Natural Resources, Public Land Corporation is required and authorized by West Virginia Code §4-10-4. The main function of the Public Land Corporation is to hold title to the beds of the state's rivers and streams. The agency also holds title to public lands not specifically held by other state agencies.

## Objective

The objective of this review is to determine if the fees charged by the PLC are adequate, and to update issues from the previous audit.

## Scope

This review discusses the activities of the Public Land Corporation from 2001 to the present. This scope was determined to be adequate for the purpose of a full performance review due to the performance audit conducted in 2001 and the post audit conducted in 2003.

## Methodology

Information compiled in this report was acquired from the West Virginia *Code*, the agency's Legislative Rules, information from other government agencies, interviews with PLC staff, meeting minutes, annual reports and surveys of surrounding states. This evaluation was conducted in compliance with Generally Accepted Government Auditing Standards (GAGAS) as set forth by the Comptroller General of the United States.



# Issue 1

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## The Public Land Corporation's Fee Structure is Out-Dated and Inadequate.

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### Issue Summary

*The Legislative Auditor is concerned that the PLC's Board of Directors has held these fees constant since 1968.*

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In 1968, the Public Land Corporation's (PLC) Board of Directors set fees to access the beds of streams and rivers. Commercial interests are charged a fee depending on the type of access to river and stream beds, such as building large stream structures, laying cables and pipelines, dredging, building docking facilities, and right of entry. These fees are used to cover the agency's administrative expenses incurred in performing its various functions. The agency also indicates that the fees are intended to reflect the value of the state's resources. The Legislative Auditor is concerned that the PLC's Board of Directors has held these fees constant since 1968. If the fees are intended to cover administrative expenses, then the fees should increase over time to account for the inflationary increases of administrative expenses. Furthermore, the PLC assesses fees only on commercial interests, and not on private individuals. The practice of other states is that similar fees are allowed to increase for inflationary reasons, and other states charge private individuals for accessing river and stream beds. The effect of keeping these fees constant for the past 40 years and not charging private individuals is that it contributes to an unstable budget and it limits the agency's ability to perform necessary functions such as:

- liquidating financial obligations;
- purchasing lands required for public use; and
- developing, restoring and preserving sites with historical significance.

*The PLC assesses fees only on commercial interests, and not on private individuals. The practice of other states is that similar fees are allowed to increase for inflationary reasons, and other states charge private individuals for accessing river and stream beds.*

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Evidence indicates that the PLC staff has advised the board of its fiscal instability. The PLC staff is currently conducting an evaluation of best practices concerning the fee structure used in other states.

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### Fees Are to Pay for Statutory Functions

The PLC has two revenue sources, access fees and royalty income from mineral extraction. For the past five fiscal years, 65% of the PLC's funding has come from fees on average. This includes a high of 81% in 2004 and a low of 49% in 2002.

The Public Land Corporation set fees in 1968 to cover administrative costs of the agency and to reflect the value of the resources to which it held title. The PLC statute does not give express authority to set fees, however,

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Legislative Services' attorneys believe that the authority to set fees is implied by the language in §20-1A-3(6) which allows the PLC to expend income derived from the use of public lands. According to the statute, the PLC may use the income for the following purposes:

*The lack of inflationary fee increases over the past 40 years has curtailed the agency's activities in other types of projects involving preservation of architectural, historical or natural resources for the state.*

- Liquidate obligations incurred in the acquisition, development and administration of public lands until all such obligations have been fully discharged;
- Purchase, develop, restore and preserve for public use, sites, structures, objects and documents or prehistoric, historical, archaeological, recreational, architectural and cultural significance to the state of West Virginia;
- Obtain grants or matching funds available from the government of the United States or any of its instrumentalities for prehistoric, historic, archaeological, recreational, architectural and cultural purposes.

In addition to preserving public resources, the PLC also performs the maintenance of the Insurance Risk Management Program. This program pertains to DNR's real estate holdings, which includes a current record of some 1,395 structures and an inventory of all state owned lands which are held, managed or operated by other state agencies totaling over 36,000 acres.

*Although the year end balances indicate that the PLC is fiscally sound, historically the PLC budget is unstable and can experience the near depletion of its balance.*

### **The Lack of Inflationary Fee Increases Limits PLC's Functions**

Historically, revenue generated has been used to fund various types of PLC public projects. Since 1991, the PLC reports expenditures of over \$350,000 for preservation projects at Independence Hall in Wheeling. The agency informs the Legislative Auditor that no funds have been expended on special projects since 1999. The lack of inflationary fee increases over the past 40 years has curtailed the agency's activities in other types of projects involving preservation of architectural, historical or natural resources for the state.

In addition, the lack of fee increases contributes to fiscal instability. Although the year end balances indicate that the PLC is fiscally sound, the PLC budget is historically unstable and experiences a near depletion of its balance (see Table 1).

<b>Table 1 - PLC Budget Information</b>				
<b>Fiscal Year</b>	<b>Disbursements</b>	<b>Revenues</b>	<b>Surplus/Deficit</b>	<b>End Balance</b>
1998	\$527,035	\$447,814	(\$79,221)	\$417,974
1999	\$586,962	\$254,827	(\$332,135)	\$94,296
2000	\$346,893	\$351,422	\$4,529	\$98,825
2001	\$299,944	\$291,535	(\$8,409)	\$90,417
2002	\$304,457	\$375,817	\$71,360	\$161,777
2003	\$279,713	\$370,301	\$90,588	\$252,364
2004	\$270,498	\$335,836	\$65,338	\$317,703

Source: 2004 PERD analysis based of information provided by the Legislative Budget Office.

*PLC received 81% of its operating revenue from the assessment of fees in FY 2004.*

Furthermore, the PLC lost a source of revenue from the royalties associated with the Cabwaylingo coal lease. The PLC carried over \$200,000 of the payments, from fiscal years 2002 and 2003 in its account. This loss of revenue will likely make the PLC more dependent on access fees. With the revenue from the Cabwaylingo coal lease, the agency received approximately half of its revenue from fees. Without the significant income from this lease, the PLC received 81% of its operating revenue from the assessment of fees in FY 2004.

*In 1968, the PLC Board would have no way to predict that the Right of Entry fee category would be used to classify the alteration of stream beds that occurs from coal production through mountaintop removal.*

The PLC was also able to carry over \$68,000 in FY 2003 which resulted from job vacancies and leaves of absence. This, combined with the \$200,000 carryover from the Cabwaylingo coal lease is a substantial part of the agency's FY 2004 end of year balance of \$317,703. The PLC employs five individuals which alone amounts to \$286,491 in annual agency costs. The PLC estimates that it will receive only \$250,000 in revenue during FY 2005 and is concerned that the agency will deplete its balance in the future.

### **Valley Fills Were not Envisioned in the Right of Entry Classification**

Another reason the PLC should revisit its fee structure is the technological advances that have taken place in the coal industry. In 1968, the PLC Board would have no way to predict that the Right of Entry fee category would be used to classify the alteration of stream beds that occurs from coal production through mountaintop removal. According to the PLC, the original intent of the Right of Entry classification was to allow entry into a stream bed

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with equipment. It is reasonable to assume that the Board intended Right of Entry to involve projects that would not impact or alter the use or value of the stream bed. Although the Department of Environmental Protection attempts to have coal companies compensate the state for the loss of the water resource, it is not clear that the PLC has received adequate compensation for the disruption of the land bed beneath the water. Failure of the PLC to modify or update its fee structure since 1968 has possibly resulted in inadequate fee assessments for Rights of Entry awarded for mountaintop removal because the stream bed in this case has been permanently altered. Right of Entry agreements are a less formal, less stringent type of agreement than agreements for large stream structures. **The PLC has charged mining companies a \$100 Right of Entry fee for altering the use of the land bed beneath streams because the PLC had no other fee classification in which to categorize the application.** The PLC provided examples of Right of Entry agreements to the Legislative Auditor. While it is not a statistically valid sample, these four agreements provide examples of the fees charged for filling streams by coal companies.

*Failure of the PLC to modify or update its fee structure since 1968 has possibly resulted in inadequate fee assessments for Rights of Entry.*

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1. Appalachian Mining, Inc. was charged \$700 in 2001 for seven valley fills and five sediment ponds, which impacted seven streams, totaling 17,090 feet or 2.361 acres.
2. Coastal Coal was charged \$100 in 2001 for disposing of 39 million cubic yards of refuse in .377 acres of a Webster County stream.
3. Hobet Mining was charged \$100 in May 2002 for burying 70 linear feet of a stream.
4. Premium Energy, Inc. was charged \$400 in 2001 for filling 1,214.5 acres of stream.

According to the PLC, there are currently 494 Right of Entry agreements with entities which pay fees. The following table indicates the cost to commercial interests of accessing West Virginia's river and stream beds for the purposes in which the PLC assesses fees.

<b>Table 2 - PLC Fees</b>		
<b>Fee Type</b>	<b>Fee Amount</b>	<b>Fee Adjusted for Inflation</b>
<b>10 year pipeline right-of-way fees</b>		
Under 4 inches in diameter and under 200 lbs of pressure.	\$75	\$408.84
4 to 8 inches in diameter and under 200 lbs of pressure.	\$100	\$545.11
8 inches in diameter or more no matter what the pressure.	\$125 (plus \$1.25 for each additional inch, per year)	\$681.39
8 inches in diameter or under with pressure exceeding 200 lbs.	\$125	681.39
<b>10 year cable right-of-way fees</b>		
Under four inches in diameter.	\$75	\$408.84
4 to 8 inches in diameter.	\$100	\$545.11
8 inches in diameter or more.	\$125 (plus \$1.25 for each additional inch, per year)	\$681.39
<b>Other fees</b>		
Right of Entry	\$100 one time fee	\$545.11
Large Stream Structures (10 year agreement)	\$100 Annually	\$545.11
Sand and Gravel Dredging	\$200 annually	\$1090.23
Coal Dredging	\$200 annually	\$1090.23
Source: 2004 PERD analysis of information provided by the PLC and calculations based on the Bureau of Labor Statistics Consumer Price Index.		

### **Individuals Are Not Assessed Access Fees**

Compounding the inadequacy of PLC fee structure is the fact that the agency only assesses fees to commercial interests, and not to private individuals. Sixty percent (60%) of all land use agreements with the PLC are with commercial interests, while the remaining 40% are with private individuals. However, commercial interest pay a fee under the agreement, and individuals do not. Table 3 provides a list of all agreements the PLC currently holds.

<b>Table 3 - PLC Land Use Agreements</b>			
<b>Type of Agreement</b>	<b>Agreements in which Fees are assessed</b>	<b>Agreements in which no Fees are assessed</b>	<b>Total Number of Agreements</b>
Large Stream Structures	293	818	1,111
Loading, Docking, Mooring	87	62	149
Cables	138	8	146
Right of Entries	494	1,094	1,588
Pipelines	3,257	961	4,218
Ohio River Oil and Gas Lease	1	0	1
Sand and Gravel Dredging	30	0	30
Maintenance Dredging	20	6	26
Coal Dredging	5	0	5
<b>Totals</b>	<b>4,325</b>	<b>2,949</b>	<b>7,274</b>
Source: Information provided by the Public Land Corporation.			

The PLC indicated to the Legislative Auditor that, to its best estimate, private citizens were charged a one dollar “consideration fee” beginning in 1969. However, the agency stopped collecting this dollar fee due to the inefficiency of preparing and mailing a receipt as well as a memo to Accounts Payable explaining the basis for the one dollar deposit. A PERD survey of surrounding states indicates that private citizens are assessed fees for use of state resources. The PLC should consider charging a fee to private citizens in order to help cover its administrative costs.

### **Comparisons to Other States**

The Legislative Auditor contacted officials in surrounding states to determine if West Virginia’s fee structure was comparable to those in other states. The Legislative Auditor found that the states have very different approaches to regulating public lands and river beds. While fee structures varied considerably due to the various approaches, some points of comparisons were apparent. West Virginia’s bases its fees for cables and pipelines on the size of cable and pipelines and pounds of pressure. Surrounding states base their fees on the length of the cable or pipeline in the stream bed. Consequently, West Virginia charges the same fee for laying 100



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feet of pipeline as it does 10 feet of pipeline in a stream bed. Additionally, surrounding states assess fees to private citizens for various activities impacting submerged lands. Given that 40% of the PLC's land agreements are with private citizens, the agency should consider whether or not assessing fees to private citizens is appropriate. A summary of the Legislative Auditor's findings in surrounding states is described below:

### **Pennsylvania**

Pennsylvania charges a \$250 minimum and a \$5,000 maximum for pipelines and cables annually, depending on the length of the pipeline in the stream bed. Pennsylvania charges the fee every year until the line is removed or abandoned. This is significantly different than West Virginia, which charges a maximum of \$125 a year for ten years. **Pennsylvania also charges private land owners an annual \$250 fee for private recreation docks.** West Virginia charges no fee for this use of public resources.

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*Surrounding states assess fees to private citizens for various activities impacting submerged lands.*

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### **Ohio**

Ohio does not own stream and river beds. However, Ohio owns Lake Erie, where private landowners must pay an annual \$50 rental fee for constructing docks. Erosion control structures require rental fees of \$50 plus \$0.01 per square foot a year payment. **Ohio also provides for fee increases linked to the Consumer Price Index to be calculated every five years.** Ohio expressly prohibits rental fees from being lowered.

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*Ohio and Maryland have specific statutory language to adjust fees every five years to reflect changes in the Consumer Price Index.*

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### **Virginia**

Virginia does not exempt private citizens from fees for various activities which disrupt the beds of the states' waterways. Virginia requires private landowners to obtain a permit for the construction of private piers more than 100 feet from the low water mark. Virginia requires application fees of \$25 if the project is valued at \$10,000 or less and \$100 if the project's value is over \$10,000. For submerged crossings of pipelines, Virginia charges a minimum of \$1.00 per linear foot and bases the assessment on the diameter of the pipeline.

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## Kentucky

Kentucky owns the river beds in boundary rivers. However, other bodies of water may be privately owned.

## Maryland

Maryland's state code specifies that **after a five year period, annual fees shall be adjusted to reflect changes in the Consumer Price Index.** Maryland also charges a \$500 application fee and an annual payment of \$0.45 per linear foot for cable crossings.

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*The PLC needs to charge sufficient fees to be able to fulfill its statutory duties, maintain a stable budget and engage in public preservation projects.*

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## Conclusion

The Board of the Public Land Corporation set fees in 1968. Since then, the fees have not been revisited. The PLC needs to charge sufficient fees to be able to fulfill its statutory duties, maintain a stable budget and engage in public preservation projects. Fees for commercial interests need to reflect the value of the resource, the extent of the disruption of the resource, and the administrative costs of the agency. The PLC Board also needs to consider assessing private citizens for the privilege of using a state resource, much as the DNR charges for access to other state resources in the form of hunting and fishing licenses. PLC staff informed the Legislative Auditor that a study of fee structures across the United States is already underway within the agency. The Board should take action on this issue in the near future. Failure to update the fee schedule will limit the PLC's ability to carry out its administrative responsibilities.

## Recommendation

1. *The PLC Board should develop an updated fee schedule which reflects the current value of resources and the administrative costs of services provided. Once approved by the board, this schedule should be codified in legislative rules.*

# Issue 2

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## The Standards Used by the PLC to Determine Fair Market Value are Not the Same as the Standards Required by State Law.

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### Issue Summary

West Virginia Code requires the Public Land Corporation (PLC) to use the 1972 version of the Uniform Appraisal Standards for Federal Land Acquisitions.” These federal standards have been updated since 1972 to reflect increased levels of public protection deemed necessary by the federal government. The PLC is using current federal standards in appraisals and promulgated a rule which cites the current appraisal standards. However, West Virginia Code is not consistent with federal standards. A statutory cleanup should be made so that the PLC consistently operates within the law and to avoid potential litigation.

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*West Virginia Code is not consistent with federal standards. A statutory cleanup should be made so that the PLC consistently operates within the law and to avoid potential litigation.*

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*The current federal standards reflect changes in federal law enacted in response to the savings and loan scandals.*

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The standards for appraisals on land which is to be sold, leased or transferred by the PLC are provided in §20-1A-4(d) which states:

*...Except as provided herein, public lands may not be sold, exchanged or transferred by the corporation for less than fair market value. Fair market value shall be determined by an appraisal made by an independent person or firm chosen by the public land corporation. **The appraisal shall be performed using the principles contained in the “uniform Appraisal Standards for Federal Land Acquisitions” published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972;...** [Emphasis added.]*

These standards were originally issued in 1971 by the federal Interagency Land Acquisition Conference. They have been revised five times between 1971 and 2000.

The current standards, issued in 2000, updated procedural issues and addressed changes in federal law brought about by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). FIRREA was enacted in response to the savings and loan scandals of the 1980’s in which fraudulent appraisals played a part in bank failures. A result of FIRREA was the creation of the Uniform Standards of Professional Appraisal Practice

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(USPAP) which mandated licensing and certification for real estate appraisers. Current federal standards reflect mandated licensing and certification of appraisers, which provides for increased public protection. West Virginia Code does not reflect these changes instituted at the federal level.

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*Current federal standards reflect mandated licensing and certification of appraisers, which provides for increased public protection.*

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The PLC promulgated a legislative rule during the 2004 regular legislative session. Section 2.8 of Title 58, Series 2 defines what is meant by an independent appraisal. It directs the appraiser to use “the current issue” of the Uniform Standards of Professional Appraisal Practice.” Though the PLC did take action to rectify this problem through the rule-making process, the Legislative Auditor is concerned that without consistent statutory language, the PLC places itself at risk for litigation. Although the Legislative Auditor cannot determine the extent of such risk, it is the opinion of the Legislative Auditor that the state code should reflect the updated federal standards.

The Real Estate Appraiser Licensing and Certification Board is in compliance with the federal standards due to the 1999 amendments to its statute. The Board reports to the Legislative Auditor that before its code section was re-written it experienced problems resulting from the confusion of which standards applied.

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*The Public Land Corporation is using the current federal standards in its operations. However, the statute calls for the use of out-of-date standards.*

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## **PLC in Compliance with Federal Standards**

The Public Land Corporation is using the current federal standards in its operations. However, the statute calls for the use of out-of-date standards. It is the opinion of the Legislative Auditor that the PLC needs to consistently operate with federal law as well as the West Virginia Code. Despite a 2003 Post Audit report which first identified this issue and recommended that the PLC request legislation amending §20-1A-4(d) to reflect updated standards, the PLC failed to do so although concurring with the recommendation.

## **Conclusion**

The 2000 update of the Uniform Appraisal Standards for Federal Land Acquisitions refined earlier additions, eliminated inconsistencies between it and other federal laws, recognized the initiation of mandated licensing and certification and provided heightened public protection. State law does not reflect the heightened public protection provided in the updated federal standards. The updates in the federal standards are substantive and institute public protections which were not available in 1972.

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## **Recommendation**

2. *The Legislature should consider amending the code to reflect current and future versions of the federal standards.*



# Issue 3

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## Update of 2001 Recommendations

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### Issue Summary

PERD issued a report on the PLC in September 2001 in which it identified one issue:

*The Cabwaylingo Coal Lease with Vantage Mining Corporation has Several Irregularities Indicating that the Lease Should be Reevaluated or Possibly Voided.* PERD made four recommendations in response to this issue. The Public Land Corporation has complied with three of the four recommendations.

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*The section chief believes that any attempt to void the lease would result in a costly expense to defend the action in court.*

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### Recommendation 1

*The Vantage Coal lease agreement executed by the PLC should be renegotiated or possibly voided.*

**Level of Compliance:            Non Compliance**

The PLC asked its new section chief to review the lease when he assumed the position. The section chief reports to the Legislative Auditor that he found no legal reason to void the lease, therefore it is still legally binding. Based on conversations with the governor's counsel, the section chief believes that any attempt to void the lease would result in a costly expense to defend the action in court.

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*Requirements for competitive bidding and public hearings are now identical.*

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### Recommendation 2

*The Legislature should consider amending the PLC statute to ensure that the requirements for leasing gas, oil and mineral rights are just as stringent as those required for land sales, transfers or exchanges.*

**Level of Compliance:            Legislative Action Taken**

During the 2003 regular session, the Legislature passed House Bill 2512 which placed mineral leases in the same category as land sales and transfers. Requirements for competitive bidding and public hearings are now identical.

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### **Recommendation 3**

*The PLC should be required to have leases prepared and reviewed by individuals knowledgeable in coal leases, analysis of coal appraisals and all other aspects of leasing mineral rights.*

#### **Level of Compliance:            Legislative Action Taken**

This requirement was addressed by HB 2512 as well as by the newly promulgated rules.

### **Recommendation 4**

*The PLC should comply with the West Virginia Code §20-1A-4(f) by promulgating rules regarding procedures for conducting public land sales by competitive bidding, modified competitive bidding and direct sales.*

#### **Level of Compliance:            Full Compliance**

The PLC submitted rules to the Legislature in time for promulgation during the 2004 legislative session. Procedures were established in 58 CSR 2 for competitive and modified competitive bidding, as well as direct sales of public lands.

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*Procedures were established in 58 CSR 2 for competitive and modified competitive bidding, as well as direct sales of public lands.*

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# Appendix A: Transmittal Letter

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## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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August 10, 2004

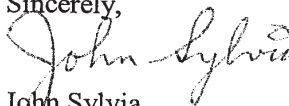
J.M. Mike Withers, Chief  
Real Estate Management Section  
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Dear Mr. Withers:

This is to transmit a draft copy of the Full Performance Evaluation of the Public Land Corporation. This report is scheduled to be presented during the August interim meeting of the Joint Committee on Government Operations in Beckley, West Virginia. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report between August 11, 2004 and August 16, 2004, please notify us. We need your written response by noon on August 17, 2004, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, August 19, 2004 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,  
  
John Sylvia

Attachment

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*Joint Committee on Government and Finance*

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# Appendix B: Agency Response

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## DIVISION OF NATURAL RESOURCES

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August 16, 2004

Bob Wise  
Governor

Ed Hamrick  
Director

John Silva, Director  
WV Legislature  
Performance Evaluation and Research Division  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

RECEIVED  
AUG 16 2004

PERFORMANCE EVALUATION AND  
RESEARCH DIVISION

Dear Mr. Silva:

As per your letter of June 22, 2004, below you will find responses to the three (3) recommendations you asked in order to complete the performance review of our agency:

### **Issue 1: The Public Land Corporation's Fee Structure is Out-dated and Inadequate.**

Recommendation:

1. The PLC Board should develop an updated fee schedule which reflects the current value of resources and the administrative costs of services provided. Once approved by the Board, this schedule should be codified in legislative rules.

Response:

Issue 1. We agree that the PLC fee structure is out-dated and inadequate. The PLC staff has advised its Board about its fiscal instability. The PLC staff is currently conducting an evaluation of the best practices concerning fee structures used in other states. The PLC staff plans to develop an updated fee structure which reflects the current value of resources and the administrative costs of the services provided.

The PLC has the statutory authority to set its fees. Once the PLC develops a new fee schedule, it will be published. The history of the PLC reflects that this has been the practice for well over 50 years. Indeed, we believe it was the Legislature's intent when the PLC was created to allow this body to function for the maximum benefit of the State and its citizens. We believe that the periodic audits and reviews conducted by PERD provide sufficient legislative oversight.

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John Silva, Director  
West Virginia Legislature  
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**Issue 2. The Standards Used by the PLC to Determine Fair Market Value are not the same as the Standards Required by State Law.**

Recommendation:

Issue 2. The Legislature should consider amending the Code to reflect the current and future versions of the federal standards.

Response:

Issue 2. We agree the Legislature should consider amending the Code to reflect the current versions of the federal standards.

**Issue 3: Update of 2001 Recommendations.**

Recommendation 1:

The Vantage Coal lease agreement executed by the PLC should be renegotiated or possibly voided.

Response 1:

We do not believe we can legally comply with the recommendation that the lease be voided. The PLC Chairman asked the new Section Chief (also PLC Executive Secretary) to review the lease when he assumed the position. He did not find any legal reason to void the lease. He also consulted with the Governor's Counsel who agreed that any attempt to void the lease would result in a costly expense to defend the action in court.

Recommendation 2:

The Legislature should consider amending the PLC statute to ensure that the requirements for leasing gas, oil and mineral rights are just as stringent as those required for land sales, transfers or exchanges.

Response 2: No new mineral leases have been issued since the passage of H.B. 2512.

Recommendation 3:

The PLC should be required to have leases prepared and reviewed by individuals knowledgeable in coal leases, analysis of coal appraisals and all other aspects of leasing mineral rights.

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Response 3:

No new mineral leases have been issued since the passage of H.B. 2512. The PLC staff has developed a new minimum royalty for sand and gravel dredged from the State's rivers. This will be presented to the PLC Board at the August 18<sup>th</sup> meeting. The Secretary employed both a mineral consultant and an appraiser in developing the proposed rates.

Recommendation 4:

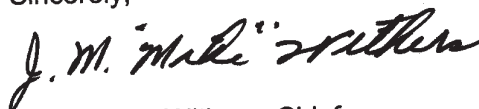
The PLC should comply with the West Virginia Code §20-1A-4(f) by promulgating rules regarding procedures for conducting public land sales by competitive bidding, modified competitive bidding and direct sales.

Response 4:

Procedures were established in 58 CSR 2 for competitive and modified competitive bidding, as well as the direct sale of public land.

Should you have any questions in this matter, or need further information, please contact me at your convenience.

Sincerely,



J. M. "Mike" Withers, Chief  
Real Estate Management Section

JMW:st

