

- Among farms categorized as “chronically weak” or ‘regressive’ in terms of changes in net returns per hectare over the period 1999–2001 (about half in number), they were located throughout Kyrgyzstan, but were more frequent in Chui (the least progressive Oblast in terms of land reform and privatization), had consistently low returns to land and labor, were shedding workers, and were exhibiting minimal land size adjustments.
- Among farms categorized as “progressive” or “steadfast” (also about half in number), they tended to also be located throughout Kyrgyzstan but were more frequent in Osh Oblast where reforms were implemented aggressively and early-on, showed solid improvement in returns to land and labor, and showed general downsizing in terms of size of land holdings over time.
- However, even among the best performing enterprises, agricultural growth or performance is at best modest, reflecting ongoing adjustments in factor (land, labor, capital) proportions in face of weak markets and continued economic uncertainty.

Coming back to Ukraine, what do we know about the nature of reforms in terms of who has benefited the most or the least, and what changes in agrarian structure and farm dynamics are occurring that are improving agricultural performance? Unfortunately, on the basis of the documentation reviewed by the team, the evidence is rather scanty, as noted by the review of literature in Box D. The growth in number of private farms is noteworthy, but there is little that can be said about the characterization of these enterprises in terms of their size, application of technology, profitability, or dynamics. Growth in the number and acreage of private farms is the result of both changes in the enterprises themselves (spinoffs and consolidations) as well as improvements in land rental contracts, both of which have been enabled by privatization. However, overall it is difficult to move beyond generalization.

What can be reasonably concluded is that privatization, combined with other reforms, has had a positive influence on agricultural performance; land reform and privatization in Ukraine have a long way to go; the benefits of the reforms passed in the 1990s will continue to accrue and accumulate with the passage of time; and the multiplicity of reforms combined with the complexity of Ukraine’s economy will continue to hamper and confound efforts at attribution requiring ever more sophisticated methods of measurement and causality to untangle.

As noted in section 2.0, Ukraine is working its way through the “third stage of land reform.” Beyond this, there will be a “fourth stage dealing with legal consolidation and removing remaining limitations on ownership, and beyond even this will be yet more stages dealing with agrarian reform that strengthen market integration (e.g., land and financial markets, and input and output markets). The real benefits of land reform will be demonstrated once real rights are demonstrated under the fourth stage of land reform, and real economic opportunity is provided under the fifth and subsequent stages.

Issue 2: Land and agrarian reform in the Ukraine has not yet been fully achieved measured by people’s legal and economic freedom to exercise their rights in land and property.

Prior to the land reform, workers and pensioners on kolkhozes and state farms received wages in cash and in-kind, as well as many social service benefits. With land reform, workers and pensioners received land shares and now State Acts, but the majority continue to lease land back to the enterprise for cash and in-kind payments. As of 2005, a total of 6.9 million eligible land share holders received agricultural land plots totaling 28.1 million ha, but 19.0 million ha were being leased back to enterprises, the majority in the form of leases four to five years or longer in duration (Table 4.9). There of course has been growth in the number and area of private independent farms, but these represent only 3.4 million ha and 42,000 families or small groups of independent farmers.

Thus two-thirds of the private landholders in Ukraine remain locked into agrarian relations that are dependent on large farms and enterprises. In addition, while former workers and pensioners on large farms who once earned their livelihoods through wage payments now have land entitlements for which they re-

ceive lease payments, their structural relations with farm enterprises are arguably little different than a decade ago. This situation is consistent with Ukraine’s agricultural policy, which promotes large-scale commercial agriculture and views land ownership as a social security mechanism.⁴²

The problem with this reasoning is that exercise of legal rights in promoting a land market is placed into a perpetual wrestling match with large-scale enterprises that benefit from the status quo. Arguably, land and agrarian reform is accomplished when the majority of people have the legal and economic freedom to exercise their rights. However, in the context of Ukraine today, there is good reason to doubt whether these conditions are yet present on sufficient scale:

- In most villages there are not competing farm enterprises (small or large) that are seeking to rent-in land.
- Even if a pensioner or small landholder is able to choose to create an independent holding, the 85 UAH (to as high as 150 UAH according to anecdotal evidence) cost that must be paid to retitle, re-issue, and re-register the State Act can be a serious constraint. While peasant landholders now have legal rights of ownership, it is difficult to argue that they have economic freedom of choice in exercising their rights to transfer the parcel to whomever they want. For someone with the wherewithal and economic means, then the resurvey and titling costs can be paid for, but this is land reform for the well-to-do, not the poor and disadvantaged.
- It may be argued that, for pensioners who lack productive labor, their best choice is to continue renting out land to farm enterprises; for some, this is certainly sensible. However, as illustrated in Table 3.1 and section 3.0, and reaffirmed in conversations with the LACs visited by the evaluation team, an inordinate amount of time and effort is being spent by LAC lawyers on dealing with the conflict that surround these arrangements.
- From the standpoint of enterprises, similar economic constraints are found, because they cannot own agricultural land or be formed on the basis of a land contribution into the Land Fund, denying them the ability to use land assets as collateral for credit.
- With respect to urban land, other constraints hinder development and investment. For the mayors of cities, they neither have effective legal or economic freedom to act. Cities have the right to sell non-agricultural land, but only within the context of a complex system of planning and control that results in highly risky development projects. Land classified for urban development cannot be bought outright by an investor (developer)—instead, it must be acquired from city ownership in a procedure that links the issuance of planning and project design permits with temporary rights to occupy the land. The ownership or long-term lease is not given until the end of construction—thus, use of the land as collateral for a construction loan is impossible. Other planning requirements, including the necessity of cities to finalize their municipal boundaries and create general plans, also hinder the ability of cities to choose sites for development and offer them (by tender or auction) for development.

There are of course other examples where land reform has worked and is working, but the above examples also reinforce the view that Ukraine is, at best, midway through the process of meaningful land and agrarian reform.

Issue 3: *ULTI’s approach to land survey without establishing boundary markers to delineate individual parcels is more cost effective than the World Bank approach, while the latter is technically superior, but only marginally.*

⁴² Arguments that pensioners living on these farms benefit from pension income earned on lease agreements lends credence to the argument that this arrangement should be maintained.

The ability of a peasant landowner to choose to farm independently or transfer his/her land is also dependent on the ability to identify the land on the ground. Thus, the issue arises of whether to place survey pegs in the process of forming the parcel and issuing the State Act. According to the World Bank (2003, p. 23):

There are two schools of thought on whether parcels should be demarcated...at the time of allocation. The first...claims that there is a significant psychological impact from new landowners seeing exactly where their land parcel is located and that the demarcation process identifies errors or practical problems in the allocation plans and corrects them before the allocation process is completed. If the boundary marker is maintained, it also saves the cost of hiring a surveyor to return to...individually demarcate the field if the owner wants to begin farming the parcel or rent it to a different renter. Avoiding the high cost of individual survey is one of the primary reasons for carrying out systematic surveys. The second approach claims that putting pegs in the ground to mark parcels is a waste of time and money because most of the land is leased out in large blocks anyway and the pegs are ploughed over in the first season. Based on...problems that have arisen in Moldova and...Ukraine with the second approach, particularly errors in allocation plans and boundary disputes which only show up years later, the technical specification for land survey in the Procedure Manual [to be used under the World Bank loan]...include physical demarcation of all parcels.

The World Bank has elected to follow the first approach in its programming of funds, whereas USAID has elected to follow the second approach. Both have implications for cost, tenure security, and land market development.

In the first approach, pegging is not costless, and surveying each new parcel and marking with boundary markers impose a significant cost that the GoU ultimately must pay back because the funding involves a loan (not a grant) mechanism. As indicated above, a significant percentage of the agricultural land is still locked into long-term contracts between lessors and the farm enterprise. The land rented-in by the farm enterprise is cultivated as fields much as it has always done in the past. In this system of agrarian contracts and large-scale mechanized land use, the rigorous survey and placement of markers by surveyors would be undone within one season. Should the exercise be costless to the GoU, this would not be an issue, but at costs of \$3 to \$7/parcel (hypothetically), this effort imposes a waste of resources that the GoU must ultimately bear.

In the second approach, consider the case of an individual wanting either to cultivate the parcel him- or herself or to lease that parcel out to a neighbor or outsider. Knowing that the plot on the cadastre map is accurate within a meter in ULTI's approach is of little value if the landholder cannot easily and without cost connect the lines on the map to precise boundaries on the ground. Both the landholder and the new lessee will want to avoid disputes with neighbors and authorities when doing the plough lines, but will also want to cultivate the full land that is their due. For many landholders wanting to cease leasing arrangements with the large farm and set out on their own, the costs of independent survey to demarcate and mark the boundaries of a parcel are formidable.

Issue 4: What is more appropriate than technical superiority is the prevailing regulatory framework governing administration of the Land Fund that influences private incentives to survey and register transactions in first and secondary transactions.

To a considerable extent, neither of the approaches highlighted under Issue 2 is right or wrong but rather the utility of each is highly dependent on the legal and land policy environment that govern the execution of land rights. The answer to the problem of “pegging” versus “not pegging” cannot be derived from the technical field of survey itself, but in addition requires understanding of the legal and regulatory framework that impose costs on transactions, and the economic realities that give these regulations meaning and content. For example,

1. If the agricultural policy remains geared to supporting large-scale, commercial, mechanized agriculture, pegging of individual parcels is at best a very costly exercise as the majority of landholders will continue their leasing arrangements with enterprises.

2. If the agricultural policy is instead reoriented to giving individual landholders legal and economic freedom to exercise their rights of exiting current leases with large-scale enterprises, pegging with boundary markers makes sense. Because the timing of these transactions may not take place for years, however, what is needed is “affordable” transactions and low-cost surveying on demand.⁴³
3. If the costs of transacting a parcel and the costs of follow-up independent survey are low (approaching zero), ULTI’s approach would make the most sense, since any lessor at a future date deciding to exit and set out on his or her own would have the means to do so.
4. If transaction costs are high, neither precise nor general boundary approaches would facilitate development of the land market for the majority of people, although the well-to-do would have more favorable standing than the poor.

It is in the situation where transaction costs are low and independent survey costs are high that the World Bank approach offers benefits, and only then in the event that pegging survives the plowing season. Under the current situation of large-scale agriculture and the majority of parcels locked into long-term leasing agreements with these farms, the general boundary approach employed by ULTI is “weakly” preferred. However, the general boundary approach would be considerably strengthened if mechanisms are put in place that reduce transaction costs involved in transacting, issuing, and re-registering the State Act.

Issue 5: *ULTI’s and the GoU’s accomplishments will have only a modest and gradual effect on development of the land market in rural areas until encumbrances imposed by administration of the Land Fund are mitigated.*

The steps involved in obtaining and registering a State Act are laid out in Annex 3; not unexpectedly, the fees and costs involved are substantial. Without a project like ULTI to facilitate, the new landholder must pass through a labyrinth of bureaucracy replete with legal fees, rent-seeking by officials, high-priced contracting firms, and potential corruption.

Consider in addition the steps required to transfer a State Act that has already been issued and registered (see Box F summarized from section 2.2). The process involved is no less burdensome. In addition—and what is most worrisome for the land market—is that the procedures involved create space for the state to influence the type of land use, appropriateness of the seller, reasonableness of the price, and, in effect, whether the transaction ought to take place. Whether or not these powers are acted on, there is risk in rural areas where enterprises seek to protect the land they rent-in, or officials demand fees for services provided, that the transaction is held up or not processed for one reason or the other.

Box F: Transactions Involving State Acts

1. Landholder must obtain Right to Transfer the Land Parcel document from the SCLR.
2. Notary must approve subject to review and verification of substantiating documents and capacity of the seller in intended land use.
3. Notary must draft and certify the transaction document.
4. If land contains a building, authorization and substantiating documentation must be obtained from BTI.
5. Notary directs the transaction documents to the MoJ.
6. If the transaction creates a new owner, the person must return to the Cadastre Center to obtain a new State Act. If instead the transaction results in a lease, this is registered separately.
7. The Cadastre Center refers the file back to the SCLR which may require new technical documentation – survey, plans, valuation, and environmental measurement.
8. New file is created.
9. New State Act is Issued.
10. New State Act is registered.

⁴³ This is true for both precision” and general boundary approaches, for once pegged and ploughed under, the landholder would still require another survey to demarcate his holdings.

Issue 6: *ULTI and GoU accomplishments have not yet materially helped contribute to the development of a land market in urban or rural areas.*

Within the framework of conditions laid out at the outset of section 2.1 that are essential to the emergence of land and property markets, only two (or three) of the seven conditions have been met. Unfortunately, the team was unable to obtain detailed information on land markets and land valuations, but some general observations are possible:

- Land sales in urban and peri-urban areas of principal cities are proceeding at a brisk pace. Unfortunately, data that used to be collected by the enterprise centers under the former USAID project are no longer analyzed or reported.
- There are a large number of anecdotal reports of large commercial interests obtaining farms many thousands of hectares in size. The reports sound sensible but the evaluation team was unable to discern the contractual conditions under which these transactions are taking place.⁴⁴
- Land sales in small cities are reportedly few in number and constrained by the complex requirements of planning, project permitting, the setting of municipal boundaries, and inventorying of state- and municipal-owned parcels.
- Private farms have been growing in size due to the operation of the land market (see Table 4.5), but surprisingly the number of farms in 2005 is only about one-third larger than the number a decade earlier (34,800). If indeed the land market was successful in spinning off new farms from old enterprises, this figure appears stunted.⁴⁵
- A substantial number of transactions are taking place in the form of inheritances as the elderly population bequeath their land assets (Table 4.10). As Table 3.1 indicates, these transactions are far from trouble-free.

Issue 7: *Lifting the moratorium on agricultural sales will have an effect, but only on the fringes of agricultural land and only for the well-to-do who can navigate the Land Fund bureaucracy.*

When the moratorium is lifted, it is likely that its effects will be seen at the fringe of agricultural areas in anticipation of the conversion of agricultural land into urban or industrial uses. If restrictions on enterprise ownership of land are lifted (or long-term leases are deemed secure), one will likely see the beginnings of old farm enterprises being bought out, or new one's consolidating land from those currently leasing. This trend toward large-scale enterprises, however, will depend less on efficiencies in capital ownership than the ability to navigate and manage transactions through the Land Fund bureaucracy.

There is also concern that the distributional gains from land reform will become lost through massive consolidation on the cheap by outside investors and "oligarchs" who have the means and can take advantage of low land values in rural areas. As noted in an attitudinal survey conducted by the IFC (2005), sentiments toward the land market encouraging effective land use and attracting investment are improving, but a significant number of producers remain concerned about land concentration (Table 4.13). Surprisingly these concerns are nearly equal between private farms that average 45 ha in size in 2004 versus agricultural enterprises that averaged 1,688 ha/ enterprise.

⁴⁴ For example, these may be taking the farm on the basis of long-term leases issued by government from state land.

⁴⁵ According to USAID (Bohdan Chomiak, 7 April 2006), "When we compare private farming in Ukraine with that of Poland or Lithuania we need to consider that both countries repatriated land to private citizens immediately while Ukraine did not. Both Poland and Lithuania favored private farmers with state support while Ukraine to this day provides less than 4% of its support to private farmers. Given these varying approaches it is remarkable that private farmers now manage 10% of productive land."

TABLE 4.13: PRODUCERS ATTITUDE TO THE POSSIBILITY OF SALE AND PURCHASE OF LAND PLOTS (% OF RESPONDENTS)

	2002		2004	
	Private Farms	Agricultural Enterprises	Private Farms	Agricultural Enterprises
Will encourage effective land use	29	12	31	23
Will attract additional investments	14	8	18	26
Will lead to land concentration in small number of landowners	39	54	35	31
Will lead to the sale out of national wealth	44	10	23	31

Source: IFC (2005, p. 40). Study supported by Canadian CIDA and Swedish SIDA.

Issue 8: *Until the Land Fund bureaucracy is dealt with, the risk is not slow land market development, but rather a dynamic market that drives transactions into the grey economy that ultimately undermines the currentness of the register.*

It would be incorrect to draw the conclusion that the above data suggest a sluggish land market. Quite to the contrary, turnover of land in inheritances, leasing, rental, and informal land sales (using power of attorney transfers) appears to be strong. The team heard on a number of occasions of informal contracts being drawn up to document the transfer of property. The dynamics of the market suggests two disturbing trends that will ultimately undermine the integrity of the land register and titling effort:

- Because of high cost in resurveying and re-registering transactions, many transactions are taking place “off the books.”
- As a result, it will be impossible to maintain the chain of ownership necessary to protect the rights of landowners and efficiently supply proof for future transactions.⁴⁶

These predictions are not inevitable, particularly if the steps involved in transacting land are simplified and fees are lowered, not only for first registrations but also for secondary registrations in the foreseeable future. Without this, however, Ukraine could find itself in the position in 10 years’ time of needing to re-register as first registrations what has already been done once.

Recommendation (6): Urgent attention needs to be given to liberalizing the land market and eliminating the encumbrances on land ownership imposed by administration of the “Land Fund.”

Until the GoU sets forth a path that minimizes the inconsistency and frictions caused by its pursuit of dual civil law and state control of the “Land Fund,” there will be few alternatives to stimulate a formal land market that serves the majority of landholders. A substantive policy debate is needed that reconciles this conflict and gives consideration to the following options:

- The cadastre offices are separated from the technical functions of the SCLR, effectively decoupling land rights from SCLR technical services.
- The legal and regulatory framework with regard to land and property in practice is simplified to identify and maintain only the critical functions required by the SCLR.

⁴⁶ For example, a pensioner bequeaths land to a niece, who in moving to the city for work decides to informally give the land to a brother, who also unable to cultivate it, gives it to a friend who sells it for a low price to an entrepreneur who recoups its cost in a season or two before moving on.

- Rather than simplification, much of the administration of the Land Fund is done away with, including many of the roles, functions, and responsibilities now practiced by the SCLR.
- A “Transaction Fund” is established to assist landholders with secondary registrations for a time period to be established in which all costs are covered by the GoU from survey to issuance of State Acts to re-registration.

None of these options at present look likely or affordable, but the cost of inertia is also very high once there is validation of the finding that a dynamic land market is moving ownership off the register.

5.0 LAND TITLING PROJECTS AND LAND REFORM INTERVENTIONS

Two organizations—USAID and the World Bank—have historically provided (and continue to provide) the majority of assistance to the GoU in areas of land survey and mapping, land tenure reform, land titling, and land registration. Important complementary work is being carried out by other bilateral donors, but these efforts are less substantial in scope and focus.

5.1 USAID COUNTRY PROGRAM, 1999–2007⁴⁷

Since 1992, USAID has sought to assist the GoU with its transition from a centrally planned to market-based economy and from an authoritative to democratic society. Its programming throughout the 1990s was heavily targeted toward interventions that supported International Monetary Fund (IMF) structural reforms aimed at achieving macroeconomic stability. However, Ukraine’s long and crippling economic decline throughout the 1990s, precipitated in part by the GoU’s slow pace of structural reforms, fomented a new change in USAID/Kiev’s 1999–2002 strategy. While continuing to emphasize the importance of economic stabilization, USAID/Kiev adopted a greater emphasis on programs at the local level as a means to improve people’s lives and build demand for reform from the bottom up. A number of notable achievements from this period have bearing on this evaluation.

Creditor Rights. “USAID advisors developed in 1998 an amended law and an operational pledge registry for movable property that is subject to the claims of creditors. This registry is now in use by banks and notaries on a nationwide basis and provides rapid, low-cost information to inform lenders whether the property in question has already been pledged.” (p. 5)

Land Titling. “Ukraine’s agricultural sector was radically transformed by the elimination of the collective farm system. [Between 1999 and 2002,] USAID assisted in this effort by supporting the restructuring of collective agricultural enterprises and the issuance of some 224,657 land titles [State Acts]....[Ten National Farmer Associations established by USAID] were instrumental in the development and passage of the landmark Land Code, which lays the groundwork for the creation of a land market and limits governmental control over land.” (p. 5)

Democracy and Governance. “USAID programs achieved demonstrable success...in democratic reform and decentralization. Success was most evident at the municipal level...in which cities were increasingly autonomous.... USAID helped Parliament become increasingly independent and transparent.... USAID’s support for an independent media helped to promote citizens with better access to information so that they could be constructively involved in decision-making.” (p. 6)

⁴⁷ This section is extracted from USAID/Ukraine’s Country Strategic Plan for FY 2003-2007.

Beginning with USAID/Kiev’s Five-Year Country Plan, 2002–2007, USAID envisioned further progress in deepening reforms and broadening participation in economic growth based on Ukraine’s economic rebound beginning in 2000:

[P]rivatization of urban real estate and industries has stimulated ... recent growth [5.9% growth of GDP in 2000 and 9% in 2001]. In the agricultural sector, the collective farm system has been eliminated and 6.75 million former collective farm members have received the right to hold land titles [State Acts]. More industry is...being privately managed, particularly in agribusiness, where privatization of medium-sized companies is now virtually complete. (pp. 1–2)

It established a new strategic goal of *Increased Social and Economic Well-Being for all Ukrainians within a Framework of Democratic Governance* to be achieved through successful implementation of five SOs (see Box G). To accelerate Ukraine’s democratic transition, work was continued on two fronts: “empowering civil society so that Ukrainians...increasingly demand transparency and accountability from...government; and...improving the responsiveness of government...to constituent needs and strengthening the democratic system of checks and balances, particularly by strengthening the rule of law...” (p. 7). It is through USAID’s SO2 (Accelerated Growth of SMEs and Agriculture) that ULTI’s activities covered in section 3.0 most directly apply. SO2 is targeted to the alleviation of four major constraints: (1) poor and inefficient policy, legal, and regulatory environment; (2) lack of business and management skills of entrepreneurs; (3) insufficient access to land and credit; and (4) lack of organized input and commodity markets.

Box G: USAID Strategic Objectives, 2002–2007

- SO1: Improved Investment Climate
- SO2: Accelerated Growth of SMEs and Agriculture
- SO3: Citizenry Increasingly Engaged in Promoting their Interests and Rights for a more Democratic Market-Oriented State
- SO4: Government Institutions are More Effective, Transparent and Accountable
- SO5: Improved Social Conditions and Health Status

5.2 USAID PROJECTS CONTAINING LAND AND FINANCIAL MARKET INTERSECTIONS

A number of USAID projects are aimed at supporting the development of a land market through land privatization and increasing the capacity of domestic lenders to supply credit to Ukraine’s SMEs and farmers, in particular targeted to problem areas (1) and (3).

Ukraine Land Titling Initiative (ULTI)

Dollar Amount: \$ 22,492,149

Duration: 2001–2006

Assists the GoU with legal and regulatory reforms aimed at facilitating the process of agricultural land titling, lifting obstacles to land transactions, and supporting systems for civil law transactions; the issuance of 1.8 million agricultural State Acts; pilot projects on creating a unified land registry; and public education and legal aid with respect to strengthening land rights awareness and protection (see section 3.0 for elaboration).

Access to Credit Initiative⁴⁸

Dollar Amount: \$ 13,724,958

Duration: 2004–2009

⁴⁸ Based on personal conversation with David Lucterhand, Project COP, 24 January 2006.

Helps develop Ukraine's commercial legal framework and financial market institutions, including mortgage (primary and secondary), municipal bonds, collateralization of assets, commercial banking, credit bureaus, bankruptcy law, agricultural financial leasing, and public information in order to develop the credit culture, create a hospitable legal and regulatory environment, and broaden access of Ukraine's SMEs and farmers to financial capital. Potential synergies:

- Helped develop the Mortgage Bond Law passed in December 2005. Currently working with four banks to issue mortgage bonds. Work in the year ahead will focus on implementing rules and regulations.
- Consultancy anticipated in the spring of 2006 to explore the ability to use agricultural land as collateral.
- Through the Ukraine Association of Realtors, will begin work on certifying the approximately 20,000 realtors in Kiev and another 20,000 realtors in the rest of the country. Of the 275 members currently registered in the Association, only 75 are certified. An assessment is planned for February 2006 to explore options.
- Working on registry development and collateralization of property with respect to developing the agricultural leasing market. Because of the moratorium on agricultural sales, agricultural land is not viable collateral. For the foreseeable future, work will focus on residential real estate development.

Ukraine Local Economic Development (ULED) Project⁴⁹

Dollar Amount: \$ 10,286,718

Duration: 2004–2009

Assists municipalities with localized economic development using participatory land-use planning and capacity building to strengthen local institutions and complete municipal plans. Land is “always an issue,” but the project is ill equipped with tools or mechanisms to resolve the problems experienced, specifically:

- With regard to urban investments, communities have little to offer—no tax holidays, limited infrastructure, and no investment capital. Land is the only asset they have to offer outside investors.
- The ability to make land available is constrained by the need to first carry out the planning process, which includes fixing the city boundaries; inventorying sites under state/municipal ownership; creating a general plan and detailed plans; and preparing land parcels for auction, tender, or negotiated sale.
- The process of offering development sites is further complicated by the inability to determine and settle (buy out) existing interests in the land, which are frequently overlapping among agencies and state enterprises.
- Cities try to avoid carrying the costs of planning and preparing the sites themselves by placing this responsibility on investors, but this merely moves the risks and costs to burden the investment projects.⁵⁰

Agricultural Policy, Legal and Regulatory Reform Project⁵¹

Dollar Amount: \$ 8,824,323

Duration: 2005–2009

⁴⁹ Based on personal conversation with Howard Ockman, Project COP, and Vocodya Nosik, 1 February 2006.

⁵⁰ Cities lack the financial flexibility to deal with this problem; they lack the money to survey the boundaries themselves, and the main way to grow their budgets is by bringing property onto the tax register but this requires that the boundaries be surveyed. Investors are able and willing to pay, but this solution is not without risk as cities may give away or sell land that has been identified or demarcated, only to find that the investor may face claims in future years because the rights are unenforceable or the sporadic registration has failed to fully adjudicate all claims.

⁵¹ Based on personal conversation with Robert Krause, Project COP, 1 February 2006.

Assists the GoU with legal and regulatory reform, tax and subsidy policy, and privatization, the latter mainly focused on liberalization and restructuring of the Academy of Science monopoly on genetic resources and agricultural extension. Unlike the ULED project in which land issues are intertwined with city land-use planning at localized levels, this project touches on land at a macro regulatory level, specifically:

- How land is valued for tax purposes affects tax policy reform. Too much land is held in reserve for seed farms, varietal testing, and agricultural experimentation.
- Land market reform was recently added as a theme to the project’s SOW, and two of the project’s Ukrainian staff have been assigned responsibility to analyze its significance to economic growth, develop recommendations, and operationalize them to achieve impact.
- The theme will focus on clarifying property rights, achieving transparency, developing a functioning market, and promoting market information with respect to land.
- As land is part of the economy’s aggregate production function, the project will focus on strengthening the linkage between land and credit mechanisms to accelerate agribusiness growth.
- Many subsidies are going to agribusiness that distort profitability and competitiveness. Credit access depends on the track record of the farmer, inputs used, experience, and financial solvency; collateralizing land can make a difference if the loan decision is on the cutting edge.
- Removing the moratorium on agricultural land while not addressing the net subsidies going to larger agribusiness can result in land being gobbled up at the expense of the poor.

5.3 THE WORLD BANK⁵²

As elaborated in its 2003 Project Appraisal Document (PAD), the World Bank loan to the GoU anticipated spending \$195.13 million (Table 5.1) over the period 2004–2012 on the following seven components:

A. International Development and Legal Reform. This component provides the SCLR with resources to reorganize and change its function from Soviet-style land-use planning to land-use regulation better suited to a market economy. The financing will focus on improving the land management and environmental advisory services provided by the SCLR, and improving the legal environment for property rights.

B. Public Awareness. Public information and education will inform recipients of State Acts and small landholders of their new-found rights and obligations in land through mass media campaigns; public meetings; and distribution of pamphlets, leaflets, newspapers, and periodicals on a mass scale. Information will be supplied

	Indicative Costs	Bank Financing (US \$M)
A. Institutional Development and Legal Reform	5.42	4.42
B. Public Awareness	3.19	2.67
C. Training	3.44	2.92
D. Land Survey Works	87.49	84.35
E. Cadastre System Development	221.86	75.78
F. Farm Restructuring Services	19.03	15.81
G. Project Implementation	8.13	7.23
Total Project Costs	348.56	193.18
Front-end fee	1.95	1.95
Total Financing	350.51	195.13

⁵² This section draws heavily from the World Bank’s PAD, 2003. Note that the World Bank loan was substantially downsized in negotiation with the GoU in March/April 2006 (see Issue 2 in section 5.5). Consequently, some of the PAD elements mentioned in this section are no longer supported by the World Bank loan. In addition, some of the ULTI criticisms of the loan raised by ULTI in the next section no longer apply.

on farm management, the legal framework related to land, and leasing of land parcels.

C. Training. Training will be provided by Ukrainian educational institutions in the form of one- to six-week short courses to lawyers and surveyors who will be involved in the restructuring of farms and in the issuance of as many as 4 million State Deeds⁵³ for Land. As advised by the SCLR, funds will be provided to four agrarian universities in Odesa, Lviv, Kharkiv, and Kyiv to equip faculties with further development of courses and their long-term training capacity. Current, university courses are based on pre-reform principles that will not equip graduates with the skills they need once they join the SCLR, cadastre centers, or the private sector.

D. Land Survey Works. This component includes the systematic subdivision of the land of former collective farms and the issuing of State Deeds for Land free of charge to individual rural landowners.⁵⁴ The work will require the preparation of base maps, preparation work including investigation and consultation with the owners of former collective farms, an environmental assessment, agreeing on farm restructuring and subdivision plans, land survey work, and ultimately the issuing of State Deeds for Land.⁵⁵

The number of State Acts to be issued are calculated in the PAD as follows:

[The] project would finance the conversion of 4 million land share certificates to State Deeds for Land. This estimate is based on...6.5 million land share certificates...[being] issued to farm members...and...1 million additional parcels on irrigated and perennial crop farms where no land share certificates were issued, making an estimated total of 7.5 million land share certificates (LSCs) that would require conversion.... According to official statistics, 2.5 million State Deeds for Land have already been issued under previous government and donor initiatives, and USAID plans to finance the issuing of an additional 1.0 million. However, most land share certificate owners receive multiple land parcels for each certificate. In some areas separate State Deeds for Land have been issued for each land parcel while in other areas State Deeds have multiple parcels on them, making it difficult to calculate the number of land share certificates actually converted. It is estimated that by the beginning of the project there would be 5 million land share certificates left to convert.... The...conversion of...4 million land share certificates...[assumes] that 20 percent of the farms would not be willing or able to restructure within the time frame of this project.... This component would be managed by the Project Management Unit of the SCLR...[and would be] contracted out to surveying/consulting components. There would be about 26 contracts (one for each oblast) of about US \$3 million each. (p. 44)

The cost per State Act is more than double the cost of ULTI's surveying costs of \$5-6/parcel, but includes the placement of ground markers, registration fees, and presumably the full range of soil and environmental monitoring as practiced by the SCLR (as elaborated in Annex 4):

⁵³ Throughout much of this section, "State Deed" is used interchangeably with "State Act."

⁵⁴ "The process would start with informing inhabitants of the enterprise about the program...followed by preparation of base maps for the area and surveying of boundaries of a former collective farm. The next step would require the identification of...land share certificate holders and developing lists of the people who have a right to a physical land parcel. Land and assets to be transferred to municipal ownership (hospitals, schools, parks, and roads) would be identified and the outer boundaries delineated...[In addition,]...The outer boundaries of blocks of land already occupied by rural residents as household plot or garden plots would be identified. Land not allocated to municipal ownership, environmental protection, already occupied by rural residents or owned in common by other groups of individuals or legal entities would be sub-divided such that each eligible person receives an area of equivalent value [to adjust parcel size for land quality differences]... according to existing legislation and procedures...required by the Manual for Land Subdivision and Issuing of State Deeds for Land. This process can take up to a year or longer...There would also be procedures for objections and appeals....The final steps of demarcating land parcels and issuing certificates [will]...take about six weeks, once the land distribution plan has been agreed. The Procedure Manual has been developed based on the experience gained by the SCLR and the programs financed by USAID, IFC and British Know How Fund..." (p. 43)

⁵⁵ A procedure manual defining a standardized methodology for systematic land subdivision and issuing of State Deeds for Land has been developed for the project, and would serve as the technical specifications for contracting out this work.

Currently, the maximum fee that may be charged for a “State Deed for Land” is 85 Hrivyna (about \$12) and is set by law. The average cost charged is about 65 Hrivyna, but cost varies.... The easier and less expensive work has already been completed and will be targeted by the USAID [ULTI] project. Also, in most cases, existing contractors [including the USAID ULTI project] do not place ground markers to show owners their boundaries, thus reducing cost, even though it is a requirement under the law. The more complicated (and expensive) sites would remain for this project, although it is hoped that the cost can be kept below 85 Hrivyna through the use of more competitive tendering procedures and removal of inefficiencies in the existing titling procedures.... It is estimated that about 60% of owners in rural areas are ...unable to pay a fee for their State Deed for Land documents making cost recovery...from recipients difficult. The Cabinet of Ministers has confirmed in a letter to the Bank that it would be the policy of the Government to issue all initial titles under this project for free to land owners. (p. 45–46)

E. Cadastre System Development. This component will support the development of a national land cadastre which would be managed by the cadastre center and will have multiple purposes. It will provide the basis of the title registry system which will record the legal rights in ownership, and transfers of ownership, mortgages, and restrictions on the property. In addition, the cadastre system could be used for the implementation of land taxes, regional planning, and providing information to public service activities. As noted in the World Bank’s PAD:

The project would support the...cadastre center as a self-financing, government-owned, company that would provide both registration and cadastre services. An appropriate charter for this company has been agreed upon...[and will] ensure that the company is limited to providing cadastral and registration services on a cost recovery basis, at prices and minimum standards regulated by the Government. (p. 5)

With regard to scope,

The project would finance the upgrading of 662 cadastre center offices, including regional administrative centers and the headquarters. Costs includes renovation of offices, computer equipment, software purchase and deployment. The upgrading of the cadastre center network of offices and installation of the computerized cadastre and registry system would occur in three phases. The first phase would establish an “interim system” at each of the 26 Oblast centers of the cadastre center, in order to...ensure that the information received from the systematic survey contracts under Component D is processed, checked and stored.⁵⁶ The second phase [first 3 years of project] would develop the computerized cadastre system and rehabilitate and equip the network of cadastre center offices in rural areas. The third phase would upgrade the title registration “module” of the computerized cadastre system and rehabilitate and equip cadastre center offices in urban areas. (p. 46–47)

The project would...finance data entry of the up to 50 million records of land parcels available at raion registration offices. These include parcels for Dachas, garden plots, urban plots, commercial plots, etc. as well as the rural State Deeds for Land that have already been issued. (p. 48)

The following conditions for disbursement have material bearing on Component E related to cadastre development:

Amendments shall have been adopted by the Cabinet of Ministers Resolution number 689 of May 15, 2003 on “measures for Creating a Single System of State Registration of Land and Immovable Property and the Rights to them within the State Land Cadastre” providing for the phase out of various existing registration system activities involving...land...real estate and other immovable property rights... and consolidation within the Cadastre Center of the unified registration system...satisfactory to the Bank...In addition,...the following condition of disbursement shall apply to Part E3 (Cadastre Development in urban areas)...i) the Borrower shall have promulgated a cadastre and/or title registry law satisfactory to the Bank establishing a unified cadastre and reg-

⁵⁶ “In order to ensure that a system is in place by the beginning of the project, a simple software package...would be developed for capturing both geographic and attribute data generated from completed systematic land surveys. A simple computer system would be set up in each Oblast Center...The data format used for the interim system would be convertible to any new system developed in phase 2.” (p. 47)

istry system, assigning institutional responsibility for managing the registry of both land and buildings in a unified manner, and establishing adequate registration procedures... (p. 35)

In the ideal scenario a cadastre and/or title registry law would be in place soon after the date of project effectiveness so that Phase 2 and Phase 3 could be implemented simultaneously. However it is likely that the passage of a cadastre and /or title registration law would lag behind the design and... installation of the cadastre system, ...a “second best” solution would need to be sought. This would require that the cadastre system design has additional flexibility to allow alternative institutional arrangements... (p. 47)

F. Farm Restructuring Services. This component will provide advisory services to new or potential landowners including explaining legal rights and obligations, advice on rental agreements, technical support in cases where there are disputes between parties over division of land and non-land assets, and advice on the development of plans for land use where land is used in common. It will also provide advice to former collectives in transferring social assets to municipal authorities and former collective entities in dealing with debt problems, and to municipalities on how to manage the land reserves and social assets placed under their control as a result of farm restructuring.

G. Project Implementation. This component includes a Project Implementation Unit (PIU) in Kiev, and up to three regional representatives in each of the 24 oblast offices and the Autonomous Republic of Crimea. The PIU is temporary and designed to absorb the large incremental load on SCLR management created by the project.

5.4 ULTI CRITICISMS ON IMPLEMENTATION OF WORLD BANK LOAN

ULTI has been critical of components D and E of the World Bank loan; its principal concerns are conveyed in an official memo to the SCLR commenting on the bidding documents used to tender the land titling activity (Dobrilovic, Cheremshynsky, and Klose, 2005).

1. *ULTI states: The World Bank excludes a substantial portion of land share holders from receiving State Acts with World Bank funding, including those who have received their State Acts earlier or have made arrangements outside the scope of the ULTI Project.*

Some 2 million land share holders find themselves bound by contracts where surveys have been started (or completed) by private contractors, but the State Acts have not been documented/issued due to unacceptable work or financial difficulties of land share certificate holders.

ULTI Solution: ULTI recently implemented land titling in several pilot cases to complete the preparation and issuance of State Acts for approximately 100,000 land share holders stuck in pre-existing contracts. The cost per title of such contracts has been low (about \$3.00 per land share certificate) and the implementation completed quickly (about three months in most cases). The ULTI methodology is tested and can be easily adopted and implemented by the World Bank project, thus including all remaining land share certificate holders as beneficiaries of the project.

2. *ULTI states: The World Bank has failed to establish adequate safeguards for rural citizens whose land shares are being converted to State Acts.*

There is bias toward mapping over establishing rights to rural land parcels (e.g., while payments for work are performance-based, 60% of the contract value is paid on completion of the parcel design map, and another 20% is paid for registration of State Acts and completion of the land book). In total, 80% of the contract value is paid prior to issuance of the State Act. ULTI, by contrast, reserves 35% until the State Act is issued. In addition, payment on completion of issuance of State Acts is based on statement from the PIU that State Acts have been issued, but the PIU does not have the resources to verify issuance, and there is no verification by an independent third party. Contractors bear too much of the public information

and education burden when (1) there is no activity enabling the contractor to engage NGOs to assist in public information and education has yet to begin and (2) land survey organizations experience a conflict of interest between completing the survey work for which they are best suited and advising citizens on the land allocation process that typically slows completion of survey and titling work. It is also questionable whether land survey firms are qualified to advise citizens about their legal rights in the process of titling land and issuing State Acts.

ULTI Solution: ULTI has proposed a number of mechanisms to better preserve and safeguard the rights of land share holders. First, independent verification (adding less than 10 cents) per issuance of State Acts should be a requirement for final payments to contractors. Second, a change in the performance-based payment structure, reserving a greater percentage of the contract value for final payments, would establish stronger incentives for contractors to ensure that citizens receive their State Acts in hand.⁵⁷ Finally, requirements for land survey firms to deliver information and hold village meetings on land rights should be minimized and such work implemented by third-party organizations without a stake in the payment for work to prepare State Acts. The ULTI legal aid program has proved that information and legal advice to citizens from an independent source is essential for citizens to protect themselves from official abuse and exploitive transactions.

3. ULTI states: The World Bank does not include systematic titling and registration of land of rural settlements as part of its project.

The project description document makes it clear that completion of such work is not contemplated using World Bank funding. Development of a viable real property registration system requires valid legal data on ownership of all land parcels. World Bank contractors converting land shares to State Acts are best suited to provide such information by complete titling and registration of village settlement lands concurrently as they title and register land allocated to land share certificate holders. The \$85 million budget allocated under the World Bank Project Component D (land survey works) is sufficient to complete titling and registration of all remaining land shares as well as the lands (land and buildings) of village settlements. USAID methodologies tested in the region show that surveying, titling, and registration of rural settlement land and buildings can be conducted for \$6.00 per parcel.⁵⁸ The World Bank project as currently planned misses an important opportunity to systematically map, title, and register all rural land in Ukraine, including agricultural land, village houses, garden plots, and all other properties in rural areas.

4. ULTI states: The substantial resources dedicated to preparation of base maps for each work area and overview cadastral maps for each oblast could better be spent to deliver a more useful product to Ukraine—fully registered, tradable land titles.

With the moratorium on sale of agricultural land set to expire in 2007, the urgency of completing the titling and registration of *all* rural land increases.

ULTI Solution: The orthophoto basemaps currently planned should be produced as quickly as possible and used not merely for control and data management, but as the key tools in a systematic titling process covering all agricultural land, village houses, garden plots, and all other properties in rural areas. All rural land would be privatized and formally registered in a short period of time, offering individuals security in their land rights. For individuals entitled to a physical parcel

⁵⁷ For example, for payments made by work area (i.e., village Rada) for conversion of a LSC to State Act: 10% advance; 20% payment upon completion of geodetic survey; 30% payment upon preparation of a final parcel design map, with landowners and cadastral numbers assigned to each parcel; 20% payment upon registration in the land book of all parcels titled (*registration of State Acts*); 15% percent upon statement from PIU that all State Acts have been issued to landowners in a work area; and 5% payment upon Certificate of Completion issued by the respective Cadastre Center.

⁵⁸ The USAID Albania Registration Organizational Improvement Project conducted initial registration of land of rural settlements, including survey, for an average cost of \$5.94 per parcel.

of agricultural land, the formalization of rights allows them to cultivate that land or lease to an active farmer for additional income. For local governments in rural areas, systematic registration of land establishes a complete property tax base and comprehensive information for land management purposes.

5.5 ISSUES AND ASSESSMENT

Issue 1. The nexus of land reform and access to financial capital among projects in USAID's program might benefit from integration.

USAID funding supports four projects that have either a land market development or credit access focus: ULED; ULTI; Access to Credit; and Agricultural Policy, Legal, and Regulatory Reform. While each project is tailored to producing impact, each quickly comes up against the next binding constraint—for example, the absence of credit and economic opportunity to give land value in the case of ULTI's titling of agricultural lands; lack of land demarcation (including village boundary surveying) and financing mechanisms to enable better land use planning; and emergence of urban land markets in the case of ULED,⁵⁹ or lack of land titling in urban areas that enable collateralization of property for the expansion of agricultural leasing in the case of the Access to Credit project.

While each project has the potential to benefit others, there are also multiple constraints related to geographics, timing, and state of market development that work against these synergies being achieved. Ukraine is an extremely large country, and no donor can be everywhere and assist with all aspects of economic development. However, if resources and timing permit, USAID might identify pilot areas of confluence where a portion of resources from each project will be programmed to achieve targeted and integrated impact.

Recommendation (7): If resources and timing permit, USAID should identify pilot “areas of confluence” where a portion of resources from each project will be programmed to achieve targeted and integrated impact. For example, three sites might be chosen where ULTI's pilots and ULED's municipal planning are joined, the Access to Credit project works on municipal financing and agricultural leasing, and the Agricultural Policy project works with private agribusiness to accelerate investment.

Issue 2: Slow implementation of the World Bank loan with the GoU has until recently limited space for USAID engagement and confounded USAID programming on what it might contribute in the area of land market development. Now that the World Bank loan has been scaled down in size to approximately \$30 million, there is urgent need to reassess the implications in terms of gaps created and USAID priorities.

The evaluation team believes that USAID has been too optimistic about Ukraine's progress with land reform and the characterization and state of its land market development program. While USAID is anticipating ULTI's closure in September 2006 without commitment of follow-on funding, the team feels a sense of urgency that Ukraine's land reform program has a long way to go, and that donor assistance is critical in light of Ukraine's fragile economy and risk of backsliding on reforms and progress already made.

The World Bank program—until March 2006 in theory—had presented an all too easy panacea for this problem; with funding of \$195.13 million, the program was both well funded in the activities it supported,

⁵⁹ ULTI's pilots, with the village-wide approach, may offer some solution to the problems of identifying and preparing urban sites for development. However, the project is ending, and pilots focusing on non-agricultural land have only recently been introduced.

and its massive scope covered nearly all the activities where other donors might lend TA: legal reform, public awareness, training, land survey and mapping, land registration and cadastre development, and farm restructuring. Consequently, there was little space where USAID might continue to lend assistance, if indeed it wanted to continue its TA in the land area. This problem was further exacerbated by a number of uncertainties or contingencies:

- The slow pace of implementation of the World Bank loan and now its retrenchment and downsizing (see below).
- The pace of implementation was also tied to uncertain events:
 - The MOJ’s refusal to sign off on the release of loan funding
 - Charges of the SCLR operating as a monopoly under state anti-monopoly law
 - Lack of regulations on siting the cadastral offices (whether under the SCLR or MoJ) that enable the loan to proceed.

Since the evaluation took place in January and February 2006, the team has heard that the World Bank has renegotiated the terms of the loan. According to USAID (19 April 2006), “the latest news is that the registry component is dead and the mapping and privatization component will be downsized to approximately \$30 M.” Since USAID and the World Bank are the two largest donors in the land area, this situation is now potentially problematic, as USAID had decided (prior to this decision) to discontinue ULTI and follow on work with land reform, and now the World Bank in negotiations with the GoU has decided to downsize the size and scope of its loan well. On the basis of the team’s evaluation that work on land reform needs to be continued (section 6.0), this situation now calls for even greater collaboration and coordination between the two donors who are best positioned and able to ensure that land reform in Ukraine moves forward, and certainly does not regress.

Recommendation (8): USAID is advised to organize a mini-roundtable attended by the SCLR, MoJ, the World Bank, and other donors as appropriate to raise issues of timing and opportunities for USAID technical assistance.

6.0 RECOMMENDATIONS FOR FUTURE PROGRAMMING OF USAID FUNDING

6.1 ACCOMPLISHMENTS AND LESSONS LEARNED FROM THE ULTI PROJECT

ULTI has been able to demonstrate that, within the framework of the current Ukrainian law, documentation of the ownership status of citizens to land can be achieved on a mass scale, with adequate accuracy and at reasonable cost. In terms of volume of land parcels created from land shares, the project has made a significant contribution. ULTI's activity has helped Ukraine to achieve what has been described in this paper as the "third stage of land reform" in which individual citizen ownership of agricultural land, with the opportunity to lease it or work it independently, has been established.

It must also be recognized that there is need for a fourth stage of land reform in which some or all of the existing limitations on the use and disposition of land will be lifted. As of today, Ukraine has not fully defined the principles, institutions, procedures, or practices that will characterize its future land system. It may achieve over time a full system of civil law and market relations following the models of European civil law. Alternatively, it may pursue a system in which the state retains a stronger role as manager of land use and overseer of transactions and market activity. Critical decisions made in the near future will have a significant influence on the direction of land policy and on the nature of land and property rights in the Ukraine. These decisions include the conceptual and practical definition of the "unified registry/cadastre." They also include consideration of the draft law *On the Land Market* and other legislation. The "moratorium" on the sale of agricultural land is scheduled to end in January 2007.⁶⁰ The state should be considering the policies and preparing the actions that it will take in response to these events.

These decisions will affect the nature of property rights and their protection that ULTI has helped secure for citizens. They may strengthen rights or erode them through continued implementation of burdensome regulatory requirements and transaction costs that create opportunities for ad hoc interference by state/municipal officers in dealings with land. USAID should not forego the opportunity to influence the policy debate. At the least, it should be mindful of the need to protect the "investment" that it has already made. At best, it can help steer the trend of future land reform in the positive directions that the past activity has achieved.

⁶⁰ A decision could be made to extend this moratorium.

6.2 NEED TO REVIEW TECHNICAL ASSISTANCE PRIORITIES

The GoU has become complacent in implementing its land titling and land reform program, and excessively discounts the fragility of land institutions put in place over the past decade. Given the Herculean task of what this evaluation team sees in terms of a need to fortify these institutions and create for the majority of people the legal and economic freedom to exercise their land rights, expanded breadth in partnership is not a cliché but an imperative.

However, simply stating that needs are imperative does not make it easy to identify the programming areas where USAID can assist the GoU in future project and program interventions. The World Bank loan to the GoU, for example, in its massive scope, covered nearly all the activities where other donors might have lent TA, including legal reform, public awareness, training, land survey and mapping, land registration and cadastre development, and farm restructuring. Now that the World Bank loan has shrunk in size from \$195.13 million to approximately \$30 million, USAID will need to rethink the implications both for Ukraine's land reform, and for its own programming.

Two or three joint meetings would both help to define what USAID might do in this area and facilitate further development of collaboration with partners. The following mechanisms are suggested to facilitate dialogue.

- Host a mini-roundtable attended by USAID, the WB, the SCLR, and the MoJ to discuss areas of focus for each agency and donor.
- Host with partners a national policy conference that draws in the scientific community to review the pace of Ukraine's land reform and clarify the needs and strategies for moving forward.
- Finally, develop a new project that is consistent with the strategies, mechanisms, and protocols worked out above and continues support for Ukraine's land market development.

The following section anticipates the opportunities that will be identified by these mechanisms and attempts to marry the needs identified by this evaluation (and anticipated from the national conference) with USAID's strengths and comparative advantage.

6.3 FUTURE USAID INTERVENTIONS

1. Continue the work of the LACs and Outreach in Rural Areas through Direct USAID Grant to the NGO—All-Ukrainian Union for Legal Assistance to Rural Population

With few exceptions, nearly everyone the team spoke with, in and outside the GoU, praised the work of the LACs in extending information on land rights to rural citizens. A number of well-placed informants went so far as to say that if any component of USAID's work continues, it should be the work of the LACs, for "they have helped bridge a critical gap between policymaking in Kiev and lives of rural citizens." However, the LACs at present are overextended, and continuing to work in all 25 oblasts is unrealistic without increased budgetary and technical support. Forming the NGO (as described in section 3.0) and decoupling the LACs from USAID will help diversify funding, and lend them greater autonomy. As noted in section 3.0, many of the problems that stemmed from combining political and legal advocacy along with policy and technical work under the one roof of ULTI could be resolved by spinning off the legal aid component to the NGO. However, USAID's funding will need to continue for at least another three years with gradual phase-out thereafter as feasible, until such point that rural incomes of the majority of the rural poor enable the NGO to charge fees without prejudice. This component should:

- Continue public outreach by helping to assemble and translate the legal and regulatory framework from above to better inform the public of their land rights and obligations.
- Expand legal assistance for the rural poor and socially and politically disadvantaged.
- Undertake applied research on land tenure reform implementation, good court opinions, and interpretive analysis to influence the evolution of legal principles and law making in Kiev from below. This research should feed into Component 2 below.

2. Support Independent Analytical Research on Constraints to Land and Agrarian Reform and Land Market Development in Ukraine.

USAID over the course of the land reform program has supported local capacity building by sending staff to conferences and seminars abroad and by experiential learning via numerous short term ex-pats who worked collaboratively with Ukrainian counterparts. The issue raised here is that these efforts alone are not sufficient to enable the generation of objective knowledge, understanding, and dissemination of information about the impacts of land reform in Ukraine. In the team’s view, there is a need for improved checks and balances that improve understanding of land reform constraints and accomplishments, but in a way that helps prevent or dissolve government’s monopoly on knowledge generation and information dissemination.

There is a critical need to deepen the analytical work on land and agrarian reform in Ukraine. Too much emphasis is currently given to “spot” assessments and consultancy reports, and too little emphasis to scientific rigor and transparency in understanding policy and generating knowledge. Similarly, ULTI discontinued the activity of monitoring the post-sale land market transactions of enterprises that were helped with their initial land privatizations. With the combined data from both projects, and with the ongoing work of the 26 enterprise real estate brokerage offices, this data bank was growing to include a substantial portion of the commercial/industrial land. The activity of secondary transactions, which were also being monitored, might have been a key barometer of land and property market formation and might have answered the fears of many Ukrainian professionals, academics, and political leaders that unregulated markets will be speculative and distorted. Moreover, when studies were conducted, the work was generally carried out by the international ex-pats without co-authorship or a dedicated effort to invest in local research institutes outside government. The team believes that what is needed is not investment in Ukrainian institutions to the exclusion of outside experts, but rather genuine two-way collaboration between U.S. and Ukrainian professionals that enhances the rigor and sustainability of knowledge generation. The management of ULTI agrees with this need; in comments made on early revisions of this evaluation report, the ULTI office notes (19 April 2006): “ULTI would readily agree that there is need to provide continuing and increased donor support of genuinely professional and independent research and professional associations focused on land market development in keeping with EU accession criteria.”

Local research center, MYLAND, is a good example of the perils of lack of donor support; while once an independent think-tank, they are today an information service NGO that depends on the SCLR, using its premises and supporting its policy. Consequently, despite a decade or more of reforms in Ukraine, the knowledge base is meager, of questionable bias when released by government, and shallow when carried out on the basis of short-term consultancies. Possible mechanisms for support:

- Under a new project, form a subcontract with the newly formed NGO—All Ukrainian Union for Legal Assistance to Rural Population—to monitor land tenure reform implementation constraints and report upward to government. Careful monitoring will be needed to ensure that the advocacy mission of the network of LACs does not cloud the objectivity of its analysis and reporting.

- Develop a competitive grants program with one or more independent centers to carry out objective research on land and agrarian reform in Ukraine. If these centers and institutes do not exist, USAID and other donors need to help create and nurture them.

3. Support Ongoing Development of the Legal and Regulatory Framework with Regard to Land and Land Market Development in Ukraine

Both the SCLR and the MoJ have expressed the imperative that USAID continue its work in the areas of land policy and legal and regulatory reform. This work should be expanded to broaden TA beyond law to include other subject disciplines (e.g., land economics and sociology of land relations). The SCLR believes it has sufficient technical support in the areas of survey and land titling through TA provided by the World Bank and other donors (SIDA, CIDA).⁶¹ The ULTI project is ending in September 2006. USAID’s Agricultural Policy, Legal and Regulatory Reform project has begun, but does not have sufficient resources to tackle the nuances of land policy in the Ukraine with the depth and focus needed. USAID’s Access to Credit project is working on ways to tighten linkages between credit and land (by improving its utility as collateral), but also lacks sufficient focus to handle the magnitude of need discerned by this team. This component would form a policy unit in Kiev that would manage, oversee, and implement the following activities.

- **Support Technical Expertise in the GoU:** Unlike the current ULTI project, which is housed in separate premises, the new project should be more closely tied to one or more government agencies. The two obvious candidates are the MoJ and SCLR. While development of law would seem to favor establishing the project within the MoJ, the need for regulatory reform touches on the activities of both the MoJ and SCLR.
- **Promote Public Awareness:** Promote improved public awareness of new and existing legal reforms. The LACs in (1) above will require public information and education materials on an ongoing basis. The World Bank loan provided resources for development of public information, but the status of this activity is now unknown. The new project will help assemble and distribute the best materials produced by donors and in return produce other materials as deemed appropriate.
- **Promote Development of Improved Policy on Land and Property Rights:** Create a learning policy cycle where legal reform from the top is piloted and implemented, and where learning from implementation is used to inform policymaking. Subcontract out research so there is a bottom-up flow of rigorous knowledge and understanding of land rights constraints on the ground to continuously create demand for legal reform.
- **Support Development of New Law and Regulations:** Long- and short-term TA should be provided to assist the SCLR and MoJ with legal and regulatory reform and with streamlining, simplifying, and easing the burden of implementing the prevailing legal framework on the citizens of Ukraine.
- **Develop Confluence Pilots to Capture Synergies of USAID Project Activities:** TA should work proactively to create “field pilots” or “areas of confluence” (see Component 4 below) to strengthen linkages among USAID’s ULED project; Access to Credit project; Agricultural Policy, Legal and Regulatory Reform project; and Development Credit Authority mechanisms.

⁶¹ However, this sentiment was expressed prior to the significant retrenchment of the World Bank loan. In the wake of the World Bank loan retrenchment, the evaluation team encourages USAID to resume discussions with the SCLR and continue this dialogue further as the evaluation team is no longer in a position to do so.

4. Undertake Comprehensive, Systematic Land Mapping, Titling, and Registration in Three to Four “At Risk of Conflict” Oblasts Where Land Tenure Solutions Will Need to be Carefully Linked to Conflict Mitigation Strategies

Both ULTI and the World Bank loan (until its downsizing) emphasized the mapping, titling, and registration of agricultural lands. The land tenure issues in the Autonomous Republic of Crimea require a more comprehensive and integrated approach. The Tatars were not eligible participants in the agricultural land-sharing program (since they were not collective farm members). They were entitled to receive subsidiary garden plots, somewhat larger than the average norm. Thus, their combined land holdings are substantially smaller than those of local citizens who benefited from land sharing, but their land holdings are larger than other local citizens who had no land share claims. The resulting inter-ethnic tension is stoking ongoing land conflict that singularly focused land interventions risk worsening rather than helping.

It is thus recommended that USAID, in negotiations with the World Bank, take a more focused regional approach than was implemented under ULTI and focus on village-wide systematic, comprehensive titling and registration. Land rights as they now stand will be fixed. ULTI’s careful social preparation and management of the publicity surrounding the work of surveying parcels and issuing State Acts along with the skills it has developed with mediation of conflict would serve this new project well. This project as currently envisioned would help overcome the following constraints:

- The SCLR in Crimea has indicated that its highest priority is the titling and re-registration of agricultural plots. Since Tatars were not given agricultural plots, they may view the priority being given to titling agricultural plots as a threat to their own rights on household plots. Comprehensive registration would enable benefits being provided to both Russian and Tatar populations, simultaneously, thus helping to minimize conflict.
- Land reallocation, mapping, titling, and registration will need to carefully marry technical approaches with mediation, public information, and legal aid services. Lessons learned from the ULTI project will help provide solid foundations for this work and should be deepened.
- Comprehensive mapping and registration of village Rada lands would also enable better land use planning and commercial development. USAID as feasible should create areas of confluence that bring to bear the potential synergies of its existing portfolio of projects.

Thus, while under ULTI, USAID focused on the titling and registration of agricultural lands in all oblasts, under this new project, its focus would shift to comprehensive, systematic registration in fewer oblasts, and would have a much stronger conflict-mediation focus.

6.4 CROSSCUTTING ELEMENTS

The above project has a number of crosscutting themes that connect with various elements of USAID’s mission:

- Anticorruption through emphasis on liberalizing the existing legal and regulatory framework with regard to land and property rights, promoting greater transparency, and investing in rights advocacy.
- Through the work of the LACs, improve democracy and governance in rural areas through greater empowerment and participation of rural citizens in government and decision making.
- Continue to strengthen land institutions and property rights to enable land market development and economic growth through deepening land and financial linkages, agribusiness expansion, and municipal development.

- Finally, continue to assist land tenure reform and land reform in “at risk” settings to resist slippage into fragile or conflicted states through mediation and land-based solutions.

ANNEX 1: BIBLIOGRAPHY OF DOCUMENTS REVIEWED

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Rolfes, Leonard, Jr. The Impact of Land Titling in Ukraine. Seattle: Rural Development Institute Report on Foreign Aid and Development #119, December, 2003.

USAID/Ukraine. *Country Strategic Plan for FY 2003–2007*. Washington, D.C.: USAID, Regional Mission for Ukraine, Belarus and Moldova, 2002.

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Valletta, Bill and Volidya Nosik. Ukraine Continuing Dilemma of Land Rights for the People. Rome: UN FAO Legal Papers on Line, February 2002. www/fao.org

ANNEX 2: SCHEDULE OF MEETINGS, INTERVIEWS, AND CONTACTS

Sunday, 22 January 2006

- 14:00 International Travel: Michael Roth arrives in Kiev
15:15 International Travel: Bill Valletta arrives in Kiev

Monday, 23 January 2006

- 9:30 Bohdan Chomiak, Chief of Agricultural Division, Office of Economic Growth, USAID/Ukraine. Contact: 19/21 Nyzhny Val St. 04071 Kyiv, Ukraine. <http://www.usaid.kiev.ua>. Tel: (380 44) 537 4620. Email: bchomiak@usaid.gov.
with
Allen Slipher, Chemonics Ukraine Land Titling Project. Contact: 36 Ivana Franko St., No. 3 (3rd floor), Kyiv, 01030, Ukraine. Tel: (380 44) 238 6086.
- 16:15 Pavlo Kulinich. Chemonics Ukraine Land Titling Project. Contact: 36 Ivana Franko St., No. 3 (3rd floor), Kyiv, 01030, Ukraine. Tel: (380 44) 238 6086. Email: Pavel@ulti.kiev.ua.

Tuesday, 24 January 2006

- 9:30 David Lucterhand, COP of USAID/Kiev funded Access to Credit Initiative. Contact: Olympic Business Center, 72 Velyka Vasilkivska St., 1st Entrance, 5th Floor, 03150. Telephone: (380 44) 537 09 66. Email: chief@pragmacorp.kiev.ua.
- 11:30 Alexander Kaliberda, Senior Projects Officer, The World Bank. Contact: 2, Lysenko St. Kyiv, 01034, Ukraine. Tel: (380 44) 490 66 71/72/73. Email: akaliberda@worldbank.org.
- 16:30 Gary Reusche, Team Leader, European Union Support to SMEs in the Rural Sector Project. Contact: 19-21 Khreschatyk St., Office 46, 3rd Floor, Kiev, 01001. Tel: (380 44) 278 63 13 OR 278 15 08. <http://www.rural-sme.org.ua>. Email: Gary.Reusche@rural-sme.org.ua.

Wednesday, 25 January 2006

- 9:00 Bohdan Chomiak, Chief of Agricultural Division, Office of Economic Growth, USAID/Ukraine. Contact: 19/21 Nyzhny Val St. 04071 Kyiv, Ukraine. <http://www.usaid.kiev.ua>. Tel: (380 44) 537 46 20. Email: bchomiak@usaid.gov.

- 9:45 Bohatyrchuk Olga, Legal Aid Center Manager, and Snozooaya Larissa, Interpreter, Chemonics ULTI project.
- 11:00 Olena Kochunlynska, Head of Public Information and Outreach Department, Chemonics ULTI Project.
- 1:00 Natalya Korchakova, Project Manager, Agriculture and Rural Development, European Union, Delegation of the European Commission. Contact: 10 Kruhlo-Universytetska St., Kyiv, Ukraine 01024. Tel: (380 44) 253 30 20. <http://www.delukr.cec.eu.int>. Email: natalya.korchakova@cec.eu.int.
- 15:00 Earl Gast, USAID Mission Director. USAID/Ukraine. Contact: 19/21 Nyzhny Val St. 04071 Kyiv, Ukraine. Tel: (380 44) 537 46 20. <http://www.usaid.kiev.ua>.

Thursday, 26 January 2006

- 7:00 Regional Travel: Depart for Field Visit to ULTI Pilot Project on Creating a Unified Property Registry, Koresten.
- 9:45 Volodymyr Vyhivsky, First Deputy Mayor, Korosten City, Executive Committee. Contact: Crushevsky St. 22, Korosten, Zhitomir Region, Ukraine, 11500. Tel: (380 41) 424 15 24. Email: vigovsky@kr.com.ua.
- 11:00 Korostenska City Rada. Meeting with Moskalenko Volodymyr Vasyliovych, City Head (Mayor), Vygivski Volodymyr Vasiliovych, First Deputy Mayor with the participation of Vygivska Paisa Petrivna, Head of City Land Resources Department.
- Korosten Raion State Administration: Ozerchuk Andriy Mykolaiovych, Head of Raion State Administration, Kostiuhenko Sergiy Vasyliovych, First Deputy Head, and Melnichenko Vitaliy, Head of Raion Land Resources Department.
- Korosten Department of Zhytomir Regional Branch (affiliation) of State Land Cadastral Center.
- 15:00 Korosten BTI: Kudrynska Kateryna Stepanivna, Head of BTI, Ivasenko Ganna Miphodieвна, Chief Engineer.
- All the above meetings were also attended by Vlasiuk Iliia Andriovych, acting Head of Zhytomir Oblast land resources department, and Rudnik Volodymyr Ivanovych Head of land survey department of oblast land resources department.
- 16:15 Regional Travel: Depart for Return to Kiev.

Friday, 27 January 2006

- 8:30 Regional Travel: Depart for Field Visit to ULTI Legal Aid Center, Chernigiv Oblast.
- 11:00 Roman Barabash. Lawyer and Legal Aid Center Coordinator, ULTI Nikolayevich office. Contact: Telephone (046 22) 442 87. Email: rbarabash@ulti.kiev.ua.
- 13:00 Attend Seminar on Legal Land Rights, Village of Birkinivka, with Alla Barabash, Lawyer, Chernigiv Center for Juridical Assistance to Village People. Contact: Telephone (046 22) 442 87.
- 16:15 Regional Travel: Depart for Return to Kiev.

Saturday, 28 January 2006

Writing and Reading Day.

Sunday, 29 January 2006

Writing and Reading Day.

Regional Travel: Depart for Field Visit to ULTI Second Pilot Project on Creating a Unified Property Registry, Crimea. Depart by Rail (5:50 pm). Arrival (30 Jan, 7:00 am).

Monday, 30 January 2006

8:30 Dmytrusenko Volodymyr Mykolayovych, Deputy Head of Chairman of Republican Committee on Land Resources of the Autonomous Republic of Crimea (RCLR).

Dzemaliadinov Enver Safetovich, Deputy Chairman of RCLR.

Palchikov Mykhail Fedorovich, Director of Crimea Land Survey Institute of RCLR.

Nedviga Valentina Vladimirovna, Head Department on Land of RCLR.

Kopylova Olga Aleksandrovna, Chief Accountant of RCLR.

9:00 Balura, Svetlana Igorovna, Deputy Director of State Cadastre Center for Crimea Republic.

Dolianovskaya Asia Nikolayevna, Deputy Head of Legal Department.

Regional Travel to Bilogirski Raion.

11:00 Lugovik Konstrantin Ivanovich, Chairman of Bilogirski Raion State Administration.

Gomeniuk Vasiliy Ivanovich, Head of Bologirski Raion Land Resources Department.

14:30 Kolobov Alexandre Mikhailovich, Head of Zelenogorski Village Rada.

Lobovetski Valiliy Leontievich, Director of Private Agricultural Enterprise “Agrofirma Zelenogorsk.”

Regional Travel to Crimea.

16:30 Koblev Ruslan Kazbekovich, ULTI Coordinator of Crimean Legal Aid Center.

Tuesday, 31 January 2006

8:30 Regional Travel from Crimea to Kherson Oblast.

12:00 Domkiv Vasyl Romanovych, Director of Private Land Survey Company “Novi Technologii.”

14:30 Skopich Oleksiy Vasiliyovych, Deputy Head of Kherson Oblast Land Resources Department.

16:00 Berezniak Andriy Anatolievich, ULTI Coordinator of Kherson Legal Aid Center.

Regional Travel from Kherson Oblast to Kiev. Depart by Rail (8:40 pm). Arrival (1 Feb, 9:30 am).

Wednesday, 1 February 2006

- 9:30 Team arrives in Kiev.
- 14:00 Robert Krause, Director, Agricultural Policy, Legal and Regulatory Reform Project. Contact: Telephone (490-7078). Email: robert-krause04@yahoo.com.
- 16:00 Howard Ockman, Chief of Party, and Vocodya Nosik, The Ukraine Local Economic Development (ULED) Project. Contact: 25 Borychiv St., Kyiv 04070, Ukraine. Telephone: (380 44) 425 44 33. Email: hockman@erum.org.ua.

Thursday, 2 February 2006

- 9:30 Bohdan Chomiak and Chemonics ULTI staff (Allen Slipher, Angus Olson, Julei Grygiel and Pavlo Kulinich).
- 13:30 Olexiy Yanov, Director, and Maxym Fedorchenko, Executive Director, Center for Land Reform Policy in Ukraine. Contact: 3 Narodnogo Opolchennya St., Office 107, Kyiv, 03151, Ukraine. Telephone: (380 44) 275 18 03. Email: myland@iatp.kiev.ua.
- 15:00 Volodymyr Zhumutsky, Deputy Head, State Committee of Ukraine for Land Resources. Contact: 3 Naronoho Opolchennya, Kyiv 06151, Ukraine. Tel: (380 44) 249 96 72.

Friday, 3 February 2006

- 10:00 Allen Slipher, Pavlo Kulinich, and Misha Cheremshynsky. Chemonics Ukraine Land Titling Project. Contact: 36 Ivana Franko St., No. 3 (3rd floor), Kyiv, 01030, Ukraine. Tel: (380 44) 238 6086.
- 12:00 NADRA Bank, 15 Artema Street. Telephone: 481 09 55.
- 14:30 Inna Zavalna, Director of the Civil Law and Entrepreneurship Department, Xeniya Volkova, Head of Division, and Natalia Kovalchuk, Head of Division, Ministry of Justice of Ukraine. Contact: 13, Gorodetskogo St., Kyiv, 01001, Ukraine. Tel: (380 44) 271 17 22. Email: Zavalna@minjust.gov.ua.

Saturday, 4 February 2006

Writing and Reading Day.

- 19:00 Working Dinner. Allen Slipher (ULTI), Bohdan Chomiak (USAID), and Gregory Myers (USAID/Washington).

Sunday, 5 February 2006

Writing and Reading Day.

Monday, 6 February 2006

Writing and Reading Day.

Tuesday, 7 February 2006

Writing and Reading Day.

Wednesday, 8 February 2006

8:30 Writing and reading at ULTI project office.

13:30 Round Table on Land Titling and Land Market Development in the Ukraine, organized by USAID and hosted by the World Bank.

Thursday, 9 February 2006

8:30 Writing and reading at ULTI project office.

15:00 Meeting with Bohdan Chomiak, Oleksandr Muliar, and Gregory Myers of USAID.

Friday, 10 February 2006

8:30 Writing and reading at ULTI project office.

13:00 USAID debriefing with Mission Director and Mission Staff.

Saturday, 11 February 2006

Writing and Reading Day.

Bill Valleta Departs Kiev.

Sunday, 12 February 2006

Writing and Reading Day.

Monday, 13 February 2006

15:00 Kryvliov Voldymyr Niktorovych, Key Legal Adviser, Bendersky Pavlo Grygorovych, Head of Corporate Banking, and Kulyk Yevheniy Yuriiovych, Head of Credit Products, Aval Bankval Bank, a member bank of Raiffeisen International.

Tuesday, 14 February 2006

10:00 Inna Zavalna, Director of the Civil Law and Entrepreneurship Department, Ministry of Justice of Ukraine. Contact: 13, Gorodetskogo St., Kyiv, 01001, Ukraine. Tel: (380 44) 271 17 22. Email: Zavalna@minjust.gov.ua.

16:00 Alexander Kaliberda, Senior Projects Officer, The World Bank. Contact: 2, Lysenko St. Kyiv, 01034, Ukraine. Tel: (380 44) 490 66 71/72/73. Email: akaliberda@worldbank.org.

Wednesday, 15 February 2006

10:00 Final meeting with Bohdan Chomiak, USAID, and ULTI staff.

Thursday, 16 February 2006

Michael Roth departs Kiev.

ANNEX 3: URGENT MEASURES TO IMPROVE THE IMPACT OF LAND REFORM

(Prepared by ULTI's Legal Team, 23 September 2005)

Urgent Measures Needed to Reduce Costs and Increase Investment and Incomes of the Citizens and the State as a Result of Land Reform: Proposals by the Ukraine Land Titling Initiative (ULTI) at the Ukraine Land market Policy Conference from July 2005.

The ULTI project has supported the work of the Verkhovna Rada of Ukraine by helping to prepare drafts of several laws related to land privatization, including the Law on Withdrawal of Land Shares in Kind, the Law on Private Family Farms, and the Law on Protecting the Constitutional Rights of Citizens to Land. In addition, the project has assisted with preparation of drafts and commentaries for many other land and mortgage market related laws and regulations.

A well-functioning market for land and buildings is a fundamental necessity for growth of the national economy, as can be seen in all developed economies in the world. Registration of such rights allows citizens to conduct transactions with confidence, while increased investment in land and buildings strengthens economic activity at the local level, increases the value of land and increases the property tax base for local budgets.

Completion of the land reform, registration of rights to land and buildings, and the delimitation of state and communally owned lands, will bring benefits to citizens and their local governments, and will strengthen local economies. With these objectives in mind, the project worked closely with Ukrainian public and private representatives to develop the following 14 major policy, legislative, and regulatory goals:

1. It is vital to complete preparation and issuance of State Acts certifying the right to land parcels for the 7 million citizens who are waiting to convert their land shares, and to prepare and issue State Acts for house plots and subsidiary plots owned by 6 million rural households, all of which will increase rural incomes. In some cases no work has begun to support issuance of these State Acts, while in other cases technical works are partially complete or the process has excluded heirs who have the right to inherit land shares. Conditions of the loan agreement between the World Bank and the GoU should be improved to assure that the \$85 million reserved for rural land titling will be used to complete this work more rapidly.
2. Registration of rights to land and buildings in the State Registry of Rights to Immovable Property should be consolidated and conducted by one state organization not involved in any conflicting activities. For example, the state organization responsible for registration of rights to land and buildings should not be in the business of selling land survey works, selling technical inventory works, or regulating land use designation. These functions are inconsistent with the integrity of the state registry of rights to land and buildings.

3. Charters of local land registry organs should be reformed to emphasize that registration of rights to land and buildings is not a profit-making undertaking, but is instead performed in the interest of the public. Operation of the state registration system to produce profits will block both use of the system and development of the economy.
4. The Law on State Registration of Rights to Immovable Property should be amended to provide that in regions where the registry is not yet fully functioning, owners who possess a State Act may transfer ownership according to procedures in force prior to adoption of the law. This change would reduce costs and reduce confusion regarding validity of the State Act. During the transitional period, it is extremely important to protect the natural development of the land market.
5. The Law on State Registration of Rights to Immovable Property should be amended to add transitional provisions for mass registration of ownership rights received during privatization. It is much less expensive to register all privately owned village land at the same time during “mass registration” than to register such land on a “sporadic” parcel-by-parcel basis.
6. The state budget should finance the first registration of rights to land and buildings villagers received during privatization. Villagers cannot afford registration fees and the process of first registration will be long delayed in rural areas if villagers are forced to pay.
7. The Law on State Registration of Rights to Immovable Property should be amended to add a unique process for conducting first registration of rights to land and buildings so that discrepancies among right-confirming documents can be discovered and solved at the time of first registration. In some cases the State Acts or other right-confirming documents may not correspond to maps or ownership documents for adjacent parcels prepared during land privatization. State organization and finance of mass-scale first registration of rights will solve these problems while reducing costs and accelerating new investment in land and buildings.
8. The Law on State Registration of Rights to Immovable Property should be amended to add transitional provisions for gradually integrating records on ownership of buildings and apartments with records on ownership of land. As a first step in the creation of a unified registry of rights, it is necessary to introduce cross-references in the existing ownership documents so that, for example, ownership documents for buildings can reference the unique identification number assigned to the associated parcel.
9. The Law on State Registration of Rights to Immovable Property should be amended to define the content and legal significance of parcel boundary maps used in registration of rights to land and buildings. Parcel boundary maps used in registration of rights to land and buildings are not mere technical documents, but are legal documents necessary to describe the location and physical scope of property rights. The law should provide a clear process for the creation of such legal documents and their approval by local authorities.
10. The Law on State Registration of Rights to Immovable Property should be amended to state that the general public may view all registry records identifying the owner of land and buildings and description of such objects, with the exception of certain personal information that is protected from disclosure. If the general public cannot know the general contents of the land registry, the registry will not fully protect the interests of all property owners and the efficiency of the land market will be reduced. At the same time, it is appropriate that certain personal information is withheld from public view.
11. The Law on State Registration of Rights to Immovable Property should make clear that the state registry of rights to land and buildings shall not contain extraneous information that is not directly related to property rights. Collection and storage of extraneous information on soils, composition of buildings, personal tax identification number, etc. will only make the state registry more expensive to operate. These unnecessary costs will be passed on either to the state budget or to property owners.

12. The Law on Delimitation of Boundaries of State and Communally Owned Land contains an inefficient process that unnecessarily delays completion of delimitation, and greatly increases the cost. Delay in delimitation of communally owned land prevents local governments from obtaining the full economic benefits of communal lands. The current law requires delimitation of far too many land parcels, thereby consuming public resources and diverting funds from completion of works for the few parcels that really require delimitation. If the law is changed, many technical works could be eliminated and the delimitation could be done faster and much more cheaply.
13. The Law on Lease of Land should be amended to provide protections to impoverished rural land owners. The Law on Lease of Land favors lessees of agricultural land, which typically lease land from villagers. The law unfairly deprives rural landowners of important rights to influence the terms on which land will be leased. These unfair provisions reduce the rents paid for such land and reduce the value of such land.
14. The Land Code should be amended to provide that the moratorium on sale of agricultural land should be lifted with respect to a particular oblast after the Oblast Rada adopts a resolution recognizing that a sufficient proportion of all State Acts have been issued to owners of such land in the oblast. Because the privatization of land has proceeded at a different pace in different oblasts, it may be best to adopt a process that allows for lifting the moratorium at different times in different regions.

ANNEX 4: ROUNDTABLE ON LAND TITLING AND LAND MARKET DEVELOPMENT IN UKRAINE

Organized by USAID

Venue:

The World Bank

8 February 2006

1:30–4:30 PM

USAID and other donors, including the World Bank, are assisting the GoU with the distribution of State Acts of Land Ownership and the development of a Land Market. Since USAID's ULTI project will come to an end in September 2006, USAID has commissioned a Team to review the lessons learned from this project and the current status of land ownership, leasing and market activity in Ukraine. Based on this assessment, the Team will advise USAID on its possible future land projects. USAID invites you to this Roundtable to share your knowledge on the current status and future needs of Ukraine. USAID's assessment team will begin each of the sessions below with a 5-minute issue assessment to kick-off the discussion. A Chair will be appointed for each session to facilitate exchange and dialogue.

Time	Session
1:30	Opening Remarks Roundtable Chair: Michael Roth
1:45	Conversion of Land Shares to State Acts for Agricultural Lands Session's Chair: To be determined.
2:30	Survey Standards to Delineate Land Parcels in Preparation of State Acts Session's Chair: To be determined.
3:00	Break
3:15	Land Market Development in Rural and Urban Areas of the Ukraine Session's Chair: To be determined.
3:45	Credit Access, Investment and Economic Development Session's Chair: To be determined.
4:30	Synthesis and Concluding Comments

ANNEX 5: SCOPE OF WORK— MIDTERM EVALUATION OF UKRAINE LAND TITLING INITIATIVE AND PROPOSED NEXT STEPS FOR LAND MARKET DEVELOPMENT IN UKRAINE

I. BACKGROUND

USAID's program to privatize land has been at the heart of efforts to develop a property market, revitalize Ukraine's agricultural economy and to provide the rural poor and retired a social safety net. Development of a property market will enable SMEs and agricultural enterprises to use frozen capital assets as collateral to obtain credit necessary for growth.⁶² This in turn would allow the agricultural sector, whose output has collapsed by 40% since independence, to recapitalize, and in turn power the growth of value added food processing.⁶³ Lastly by transferring ownership of land to rural individuals who have become eco-

⁶² Our current estimate is that there are 35 million pieces of real estate with an average cost of \$10,000, or \$350 billion in assets which are not employed in the economy.

⁶³ Based on USAID's notional estimates, Ukraine can not dramatically increase its agricultural GDP unless increased agricultural productivity increases output and increased access to markets adds value to increased supplies of raw commodities. We estimate that "modern production technologies and best practices" might increase output by 60 percent; this would boost agricultural GDP no less than 50 percent. We estimate that full exploitation of domestic, regional and international markets with Ukrainian processed food products would increase agricultural GDP another 50 percent in 3-5 years from now, with an additional 25 percent 7-10 years from now.

USAID projected baseline annual growth rate of SME employment and GDP share estimates growth of 1.45% and 1.5% respectively without an improved regulatory environment or improved access to credit. We also estimate that SMEs account for 26.2% of total Ukrainian employment and GDP. For Ukraine to achieve the OECD average of 70% share of SME employment and GDP within ten years the baseline growth rate needs to increase by 400%. Entrepreneurial access to real property mortgages would increase available business credit by at least 50% and thereby double baseline growth rates.

nomically disenfranchised during the transformation from a planned to a market economy we will ensure improved living standards for the rural poor, most of whom are elderly.⁶⁴

Accomplishing these development objectives hinges upon successful completion of land privatization and coordination with a range of other USAID programs. USAID also assumes that this requires implementation of a complementary program of the World Bank, and that the GoU will provide legislative and regulatory support. Ukraine's recent orange colored politicization has strengthened our belief in the assumption that actions of World Bank and GoU will become more complementary to our program.

We propose to conduct a mid-term evaluation of the land reform program (ULTI) and make recommendations for (1) USAID next steps, (2) capitalize on opportunities to better collaborate with the World Bank land reform program, and (3) improve USAID's approach to land reform as a component of economic development.

II. PURPOSES OF THE EVALUATION

A. ULTI Midterm Evaluation

The purpose of the midterm evaluation is to assess the effectiveness of land privatization as the fundamental first step towards development of a land market in Ukraine. The information from the evaluation will be used for future planning.

Approximately 10% of the level of effort shall focus on the performance of the Ukraine Land Titling Initiative (Chemonics), and particularly the success the project has had in laying the foundation for a land market through the accomplishment of the objectives laid out in their task order, and their contribution to achieving the Mission's Strategic Objective 2.3 "Increased Access to Land and Credit". The evaluators shall determine the status of the current activity, and provide recommendations for USAID how to implement the lessons learnt in Ukraine and elsewhere.

B. New Land Reform Directions and Program Coordination

Approximately 90% of the level of effort will focus on assisting USAID to consider new directions in the land reform activities, whether pilot privatization activities are providing direction for completion of land privatization, the impact of land reform on economic development, and coordination between USAID and the World Bank land reform privatization activities. An overall objective will be to formulate a strategy to support development of a land market, and subsequent investment in the agricultural sector. The evaluation will recommend what programmatic steps, if any, should be considered by USAID.

⁶⁴ The Impact of Land Titling in Ukraine Survey, conducted in September 2003 demonstrated that by assisting rural individuals to transform their right to land ownership into real ownership their income increased by 32%.

III. PROPOSED INITIAL QUESTIONS TO BE ANSWERED BY THE EVALUATION

A. ULTI Contract Performance

1. The contract requires the issuance of 1.8 million agricultural land titles and 13,500 commercial land titles. To a large extent this task will be accomplished. To what extent has this stimulated the development of a land market?
2. USAID has provided significant assistance for land privatization throughout the E&E region and following the conclusion of assistance contracts encountered questions regarding the validity and accuracy of survey work performed. Is the methodology used by the contractor to verify survey work sound?
3. One of the central reasons for extending and modifying the task order was the need to provide legal aid and public education to new landowners. Has this work strengthened the capacity of new landowners to protect their rights?

B. Land Market Development

1. One of USAID's strategic objectives is to improve Ukrainians access to land and credit and thereby stimulate economic growth of agriculture and business. Within this strategic objective one of the first programs was ULTI. Based on ULTI's progress in simplifying regulations, developing legislation and privatizing land USAID has developed other projects. Is there a good link between ULTI and Access to Credit and Local Economic Development projects, or is it a virtual link? If not, how can it be improved? What should be the legacy that ULTI leaves for USAID, for other projects?
2. ULTI's network of legal aid offices appears to provide needed support for people to benefit from land ownership. Can this network support implementation objectives of other USAID projects in the future? How can they facilitate land market transactions, more productive land uses and investments? Should the legal aid centers be unified into a self-sustaining organization?
3. ULTI has undertaken a number of pilot privatization activities including privatizing rural residential land, municipal land, developing procedures to create a unified property registry, developing procedures to title land that communities distributed amongst them selves, and others. As a result of undertaking these pilots they have developed procedures which will enable privatization of all non-government lands. Should future land privatization efforts focus only on agricultural lands or should future attempts deal with both agricultural and non agricultural lands? Which types of land privatization are more important for developing a land market?

C. Donor Coordination: USAID and The World Bank

1. One of the major players in developing a land market in Ukraine is the World Bank. Under the ULTI memorandum of agreement between USAID and the GoU ULTI is expected to interact with the World Bank in implementing land market reforms. However, the Bank's program appears at times to be less than effective, and the new government dissolved the agency which was to have been the Ukrainian implementer of the loan. As a result the bank has suspended implementation of the loan. Should USAID provide assistance to ensure that GoU takes the appropriate steps to reinstate the

World Bank? What would be the most effective assistance within the context of developing a land market?

IV. TEAM COMPOSITION

The evaluation team will consist of three people from USAID/Kyiv, one specialist from USAID/Washington and two external specialists (an economist and a land survey/registration specialist).

The four persons from USAID may include:

<u>Team Members</u>	<u>Level of Effort</u>
1. Bohdan Chomiak, Agriculture Division USAID Kyiv	Three Weeks
2. Kevin Sharp, Deputy Director OEG, USAID Kyiv	One Week
3. Bill Schlankser, Local Government Division USIAD Kyiv	Two Days
4. Gregory Myers, USAID/Washington (EGAT/NRM/LRM)	Two weeks

External consultants proposed are

1. Economist, ARD (proposed Team Leader)	Three Weeks
2. Land Registration and Titling Specialist, ARD	Three Weeks

The external Team must have work experience in land policy and reform issues, and in land market development in the NIS region. He/She must have experience managing Teams in the field and must have excellent writing and presentation skills.

The Team Leader will be responsible for the overall management of the assessment including the coordination, scheduling and assignment of Team members to the tasks necessary for the completion of the assessment; coordination of Team discussions of findings and conclusions; preparation and submission of draft outlines, findings and reports; preparation and timely submission of the final report; and consultation with and briefing of USAID Ukraine.

V. METHODOLOGY

Prior to arrival in Kyiv, the Team members should review the following background materials: USAID will provide these upon the selection of the Team.

- USAID Ukraine’s strategic plan
- Task Order between USAID/and Chemonics (ULTI)
- Contract between USAID/and Pragma (Access to Credit)
- Contract between USAID/and Chemonics (LED)
- Work plans and annual reports of the above

- World Bank documents and other papers related to the World Bank land program in Ukraine

Other documents may be provided as needed upon the arrival of the Team leader.

- USAID shall provide the Team with names and contact information for key individuals to be interviewed in Kyiv and other cities of Ukraine.
- USAID/Kiev will also assist with setting up meetings, local transport, translation and other logistical requirements.

The Team will travel to selected cities/villages to interview appropriate individuals. Detailed schedules for all site visits and interviews should be developed by Team members, together with the Team Leader, prior to the commencement of the evaluation.

VI. DELIVERABLES: REPORTS AND BRIEFINGS

1. The Team shall conduct weekly briefings for relevant USAID officials in order to keep them current on the progress of the evaluation and to resolve any issues that may arise.
2. The Team shall submit a draft outline for the evaluation report by COB of the tenth workday in Ukraine. USAID and the Team leader shall agree on the report outline within three workdays after start of the evaluation.
3. The Team shall conduct a ‘Key Client Meeting’ to discuss tentative recommendations and possible action plan for implementing the recommendations. The feedback from this meeting will be part of the final report.
4. The Team shall present their findings to USAID during a debriefing for all interested USAID staff at the end of the third week in Ukraine. These findings will be presented both verbally and in a written document.
5. A final evaluation report, incorporating both comments from the debriefing and written comments received within five workdays after the debriefing from USAID Ukraine staff, shall be completed by the Team leader and submitted to USAID Ukraine within ten workdays after receipt of the written comments from USAID Ukraine.

The final report (not more than 30 pages) shall contain the following:

- An executive summary not to exceed one page in length. The summary shall also be translated into Ukrainian to enable presentation of findings to local partners. The executive summary should present the major findings, observations, conclusions and recommendations for each program evaluated and a summary of recommendations for changes, improvements and possible synergies that can be achieved in USAID land and credit program;
- An introduction and background section for the overall evaluation;
- A separate section of detailed findings and observations of the evaluation. This should not exceed 20 pages;
- A discussion of conclusions and recommendations, not to exceed ten pages. This shall include recommendations and a detailed discussion of strategic opportunities for USAID programming.

The final evaluation report will be submitted in electronic form to CDIE. Three paper copies and three electronic copies in Word 2000 format final report should be submitted to USAID (for the CTO, the Evaluation and Contracting Officers), and should include the following Annexes:

- SOW,
- Description of evaluation methods used,
- Data collection instruments,
- Schedules,
- Lists of persons contacted/interviewed,
- Statistical tables,
- Charts and/or graphs,
- Bibliography of documents consulted,
- Glossary of acronyms used.

VII. WORKWEEK AND LOCAL COSTS

The Team leader is authorized to work six days a week for this evaluation while in Ukraine. Local costs, such as transportation, interpreter services, per diem and other administrative costs will be covered by USAID/Ukraine.

VIII. IMPLEMENTATION

This activity is estimated to cost approximately \$50,000 to \$70,000 (for the two proposed external specialists, and includes costs for Gregory Myers). It will be implemented through the Land Tenure Task Order, (#13) under the RAISE IQC (PCE-I-00-00001-00). It can be funded via a MAARD to the task order. The CTO on the task order is Gregory Myers. See attached budget.

U.S. Agency for International Development

1300 Pennsylvania Avenue, NW

Washington, DC 20523

Tel: (202) 712-0000

Fax: (202) 216-3524

www.usaid.gov