

THE  
UPDATED  
Cabin Owner's Guide  
To  
**SETTING CABIN FEES**  
**AS REVISED BY C.U.F.F.A.**

Version 1.9

(Formerly the Appraisal Guidebook)



NATIONAL FOREST  
HOMEOWNERS

Revised Edition  
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## EXECUTIVE SUMMARY

Those of us who own cabins on National Forest System lands hold Term Special Use Permits (“permit”). We all pay an annual fee to the USDA Forest Service. The fee is currently set at 5% of the market value of the cabin’s lot. The value is determined through an appraisal process. Appraisals are done at least every 10 years and during those ten years the fee is indexed annually.

As this version of the booklet is written, efforts are being made to change or adjust this process. The latest information about this will be on the [nationalforesthomeowners.org](http://nationalforesthomeowners.org) website. Until then, this booklet contains the best information we can bring you about the current process.

In the appraisal, the cabin’s lot is valued as if it were bare land. No cabin owner-provided (or certain third party-provided) improvements are included. Next, the value of the cabin lot is adjusted for many of the differences between the cabin lot and the comparable lots that were recently sold on the open market (“comparable sales”). Location differences, access, weather, and other normal appraisal adjustments between values are taken into consideration. The Forest Service’s position is that no Forest Service permit related limitations that affect the cabin lot use can be considered by the appraiser. NFH and a coalition of other cabin owner groups disagree, but a Cabin Coalition 2 is currently working with Congress to obtain a change in the manner in which our fees are calculated.

Not every lot in each tract is appraised. The lots within each tract are divided into “typical lot groups” having similar value in the market place (due to differences such as road access, terrain, views). From each typical lot group, one lot will be selected as representative and only this lot will be appraised. The Forest Service – with cabin owner input -- will define the typical lot groups and identify the typical lots. Occasionally a single lot cannot be grouped with others, and it will be its own typical lot.

The appraisal process begins with written notice to all permit holders in a tract. This tells you when you may meet with the appraiser and when he or she will make a visit to your tract. Cabin owners should be present when the appraiser is reviewing the typical lots to help the appraiser recognize the differences between that lot and private land that might result in a difference in value. Do so in writing. You also may want to direct the appraiser’s attention to some appropriate recent sales, and may also want to explain what other recent sales you believe should be avoided as not truly “comparable” sales. This is why NFH strongly recommends every tract arrange to have at least someone in their tract with expertise to accompany the appraiser in the walk around the tract.

The Forest Service will give the appraiser a copy of the “Inventory” of all improvements (physical improvements such as roads and utilities) for each typical lot which will indicate who paid for each improvement. Improvements provided by the Forest Service or certain third parties will be included in the valuation of the lot. Those paid for by the cabin owner, their predecessor, or third parties where it cannot be shown that the third party paid, are excluded in the valuation of the lot. Cabin owners will want to be sure that the inventory of improvements is accurate well before the meeting with the appraiser. Note that it is the Forest Service line officer and not the appraiser who creates the Inventory.

When the appraisal is finished, it will be reviewed by a Forest Service Review Appraiser to ensure it meets Forest Service requirements. When accepted, all permit holders in each typical lot group will be notified of the appraisal results and of the new fee based upon it. You must ask in writing for a copy of the appraisal if you want one. If a cabin owner disagrees with the appraisal, a request for a second appraisal may be made, and the appraisal is paid for by the cabin owners. If the second appraisal’s result supports it, you may then request a reconsideration of the fee. The Forest Service will then review both appraisals and pick a new fee based on one or both of the appraisals. Finally, there is a separate booklet available from NFH that describes an additional option: appealing the fee after you receive your first bill under the new appraisal valuation and how to use the Resolution of Issues section of the 36 CFR 251.93 to negotiate the fee after the request for reconsideration from a second appraisal.

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## INTRODUCTION

This booklet has been developed by National Forest Homeowners to inform recreation residence permit holders of the process through which their annual special use fees are determined and to give them the information and tools to represent their interests in that process. In drafting this booklet, we have tried to make the process as transparent and easy to understand as possible. However, it is a complex subject with many important details. After a great deal of consideration, we believe our members are best served by providing them with a more comprehensive booklet that can serve as a reference guide on the subject of appraisals. It is not light reading, so take some time to read this and understand it. By understanding the contents of this booklet, you can protect your interests throughout the appraisal process. The intended outcome of this process is a fee fair to the cabin owner while still providing a fair return to the American public for use of these lands.

The information in this booklet is arranged to facilitate your understanding of the current appraisal process, the detailed requirements of that process, and how you can participate and represent your interests. Thus, Chapter 1, The History of Setting Cabin Special Use Fees, explains the fee setting history, describes some of the problems that led to the passage of the Cabin User Fee Fairness Act of 2000 or “CUFFA,” details the current problems we are seeing in its application thus far, and discusses the attempts to fix those problems. Chapter 2, Overview of the Current Appraisal System, covers the current rules under CUFFA.

Chapter 3, Transition to the CUFFA Rules, was present in the earlier version of this booklet. It described options that were available to permit holders from May 3, 2006 to May 2, 2008. As that time has now run, we refer the reader to earlier versions of the booklet. We do discuss the 2009 fees based, for the first time, on appraisals performed before CUFFA stopped the process.

Finally, Chapter 4, The Next Appraisal Cycle, is likely to be the one to which you refer most often. It contains a detailed description of the process which you can use to work with the appraiser who is assigned to your tract. However, without the background information provided in this booklet, including the history of the fee setting process for the cabins, you will be less able to manage the process in a way which will result in reasonable and supportable fees.

You will find that we vary in how we refer to ourselves in this booklet, as “cabin owners” or as “permittees.” CUFFA refers to us as cabin owners. The Forest Service regulations call our cabins “recreation residences” (note they are not “recreationAL”) and we are “holders” of permits. Each cabin has a “special use permit” that allows its presence on a lot in a national forest. Special use permits are not leases, and we should try to remember to use the correct language since leases have property rights that our permits do not have. These differences are at the core of the complexities in setting a fair permit fee based on an appraisal of the lot underlying a cabin.

We hope this booklet helps you to participate in a meaningful way with the appraiser who is selected for the job of appraising the typical cabin lot(s) in your tract. If we are all involved in this process, we have the best chance of receiving fees that are appropriate and affordable.

# CHAPTER ONE

## The History of Setting Cabin Special Use Fees

### **The Early Years**

Summer homes on National Forest Lands were first authorized by Congress in 1897, though such permits were limited to annual permits with a minimum fee of \$5 per year. In 1915, Congress passed the Term Permit Act which authorized the Forest Service to issue cabin special use permits with terms up to 30 years at an increased minimum annual fee of ten dollars per year.

Fees for the permits remained stable for many years, although they gradually crept up over time, and were based on a flat fee applicable to all cabins.

In 1955, Congress directed the Forest Service to obtain fees for use of federal land based upon the fair market value of the land. In 1969, the Chief of the Forest Service decided that the annual fee would be set at 5% of the value of the lot as determined by appraisals conducted every 5 years. But in the early 1980s, argument began over the manner in which the appraisals were to be performed. Congress got involved, and in 1983 summer home permit fees were frozen pending resolution of the dispute.

### **A New Recreation Residence Policy**

In 1985, a “Chief’s Committee” comprised of cabin owners and Forest Service staff was formed to develop a new policy for cabins. After much work, a new Recreation Residence Policy set forth a new set of regulations published in August 1988, formalizing the fee at 5% of the value of the lot underlying the cabin. The lot was to be valued in its original state, without any structures on it. Appraisals of typical lots within cabin tracts were to be done every 20 years and, between appraisals, an annual adjustment (called the “implicit price deflator” or IPD) was to be applied to keep the fees tracking closely to changes in the market value of the lot. This new policy, by the way, formally changed cabins from being “summer homes” to their current designation as “recreation residences.”

While an appeal of specific aspects of the Policy was filed and upheld, that appeal did not affect the fee setting portion of the rules. Thus, the appeal was finalized and the regulations, now known as the “1994 Policy” or just the “Policy,” were republished in 1994. The rules are now found in the Forest Service Handbook at FSH 2709.11, Chapters 33 and 41, and Forest Service Manual at FSM 2347 et seq. A copy of these rules is available through the NFH website at [nationalforesthometowners.org](http://nationalforesthometowners.org).

### **1995 Appraisal Cycle**

Appraisals beginning in 1995 saw the first application of the appraisal procedures in the 1994 Policy. It didn’t take long for problems to crop up, which NFH believes included the following:

#### 1. Selection of Appropriate Comparable Sales

Sales of actual lots of privately owned land, known as “fee simple” land, were supposed to be used to establish the value of cabin lots. In practice, such sales - true comparable sales, known as “comps” - were difficult to find. The 1994 Policy called for the appraisal of the bare lot without adjustment for “improvements furnished by the holders,” but finding sales of bare fee simple land of a type similar to cabin lots was difficult in many areas of the country. Thus, improved properties were often used, and the sale price was adjusted to take those improvements into consideration.

This led to the use of comparable sales that NFH and many cabin owners believe were not truly

comparable. The matter was complicated further when the cabin tracts were described as being similar to subdivisions, so some appraisers used subdivided land, trying with limited success to back out infrastructure costs that did not exist on the cabin lot.

Problem comparables included the use of sale lots from urban and resort areas. Either no adjustments or insufficient adjustments were made to distinguish the value of the resort lot from our remote lot with limitations on cabin construction. Cabin tracts were in no way similar to development in that resort area, but limitations on the size, condition, and appearance of the recreation residence cabins were often ignored in making adjustments. This “neighborhood effect” recognizes that a property in one neighborhood will often be valued quite differently from an otherwise similar property in a different neighborhood. In typical appraisal literature, this is based on, among other things, size, shape, view, flood risk, access, surrounding uses, affluence, available schools and utilities. If a significant adjustment is not made for different values due to the neighborhood, then the resulting value of the cabin lot is inaccurately high. Some of the highest fees were seen in areas with urban influence, even where the cabin tracts were very rustic.

A specific problem arose in the choice of comparables within an area designated by the Federal Government as a “conservation easement” or a “recreation area” such as the Sawtooth Recreation Area. Once the conservation easement or recreation area designation is made, further development within the area becomes severely limited, causing the values of lots still available inside the area to skyrocket. This led to extremely high values placed on lots within sometimes modest cabin tracts because the supply of the chosen comparable lots was artificially capped by governmental action.

## 2. Adjustments to Value: Local and Regional Rules and Remoteness Considerations

Another way to approach the adjustments to a sale price of a non-cabin lot was to consider the effect on the market value of all the restrictions in use of our lots. These vary from tract to tract, but it is common to see limits on size and number of structures, and restrictions on our use of the rest of the lot. Cabin owners believed that these factors had an effect on the market value that should be taken into consideration when performing the appraisals. At that time, the response of the Forest Service was that such restrictions were already factored into the fee since it was set at what they believed was a low amount, 5%, of the appraised value, rather than a higher rate -- 8 to 15% -- that the Forest Service claimed was found on rentals in the private ownership market.

Some adjustments to value were also requested to back out the cost of cabin owner provided utilities. In those cases, when the adjustment was allowed, it was often not sufficient. Risk factors (not finding water or running into a large boulder) and added costs for the location’s remoteness (equipment move-in fees and material delivery costs are higher) were not always considered. Requests for adjustments such for conditions such as these were disallowed by the Forest Service.

## 3. Appraisal of the Site Versus the Lot

In some places, cabin lots were being appraised as if the lot extended beyond its “platted” boundaries. Lots that had a strip dedicated to public use separating them from a lake were valued as lake-front property, as if the strip did not exist. This approach allowed for appraisals to include off-site amenities and improvements over which the permittee had no authority or rights beyond those of the general public. Many permittees and NFH argued that this was not consistent with the current rules. [Ultimately the Forest Service agreed and proposed that the rules be changed to call for the appraisal of a “site” rather

than a “lot.”]

In the mid-1990’s, as results began to trickle in from the first appraisals done under the new rules, cabin owners became concerned. Fees were inconsistent. Some were acceptable, but others were not. Based upon values coming from some appraisals, some annual fees were to be raised to \$20,000-\$30,000 in Idaho and California, and \$34,000-\$36,000 in Washington State. Fee increases of \$5,000 a year were not uncommon. This huge jump from prior fees was quite shocking to the cabin owners and threatened the concept of the program as affordable to the average family.

### **Congressional Action**

In response to the problems encountered in current appraisals, the first coalition of cabin owner groups, including NFH, was formed to evaluate the problems and to attempt to find a better way to carry out the required appraisals. Congress helped out, with a series of relief bills holding off the imposition of fees in various locations until a comprehensive resolution could be achieved.

The coalition, now known as Coalition1, spent a year considering the various problems discussed above, and discussing possible solutions with Congress. Ultimately, Coalition1 joined with Senator Larry Craig of Idaho and Congressman George Nethercutt of Washington State to draft a bill to solve these problems. It was made clear to the Coalition1 that the resolution still had to be based on the value of the lot, and there was no political will at that time to change the 5% of the appraised value as the basis of the annual fee. Instead, the bill included a number of features intended to “tweak” the process to reach a more fair result and keep those appraisals from overstating what the Forest Service provides. It was intended to focus on making sure all the possible adjustments to value were included in the appraisal, and to make sure that those adjustments were not just left to the 5%. After protracted negotiation between the Forest Service, the cabin owners, and the Senator’s office on the language of the bill, and after testimony in Congress about the differences between a recreation residence cabin and an ordinary vacation cabin, the Cabin User Fee Fairness Act (assigned the acronym “CUFFA” by the Forest Service) was passed and signed into law in October of 2000. A copy of CUFFA is available online at the NFH website at [nationalforesthomeowners.org](http://nationalforesthomeowners.org). Appendix A, below, provides a citation to the CUFFA language and the subsequently enacted regulations to implement it. This new law now directs the current process for the determination of a cabin’s annual special use fee.

## **CHAPTER 2**

### **Overview of the Current Appraisal System**

The final CUFFA rules and regulations were published by the Forest Service in the Federal Register on April 3, 2006, and became effective on May 3, 2006. CUFFA's "effective date" commenced a two-year "transition period." In this time period, cabin owners decided what to do about the prior appraisals. The implementation of many of those appraisals was suspended by CUFFA and earlier legislation.

This transition period has now passed. Thus, discussion of it in detail has been removed from this edition of this booklet. The prior edition is still available.

The new appraisal rules and regulations as defined by CUFFA are now the governing law for both the reconsideration of the prior appraisals conducted between 1995 and 2000, and for all future appraisals conducted to recalculate the base cabin user fee.

#### **How Does CUFFA Differ From the Old Appraisal Rules?**

CUFFA, like the old rules, calls for the special use fee to be set at 5% of the fair market value of the lot. So what differences are there between the old rules and the new rules? We thought they were as follows:

##### **1. CUFFA Aims for a Fair Fee.**

NFH believes that CUFFA, through its very name, puts emphasis on establishing a fair fee for cabin use, and provides a mechanism, including an appraisal process, for reaching that result. Appraisers are focused on the appraisal process, and do not believe it is their job to consider whether the resulting fee is fair or not. They do agree that CUFFA is aimed at the development and implementation of a more consistent procedure for determining fees based on market factors. CUFFA also expresses Congressional support for the recreation residence program and a desire that the program remain affordable for both individuals and families.

##### **2. It's the Lot, Not the Site.**

Under CUFFA, the appraisal is limited to the lot, so the concept of appraising the site is no longer on the table. As noted in Chapter 1, this was a major problem in some of the prior appraisals, causing cabins to be appraised at much higher values than merited by their actual lot boundaries. The regulations implementing CUFFA still allow an appraiser to consider items off a lot for limited purposes. Consideration is limited, however, only allowing the lot to be valued in its setting.

##### **3. Adjustments to Value Are Explicitly Listed.**

CUFFA includes a list of specific value adjustments which may be considered, some of which were disallowed in earlier appraisals. The items listed in the adjustments include location. While the Washington Office of the Forest Service had agreed that this includes the consideration of the "neighborhood" around the cabin lot, in the new appraisals we have found this has not been the practice. There is still disagreement over whether or not adjustments for permit related restrictions are allowable. The Forest Service has obtained a legal opinion that all those restrictions are "covered" by the 5% adjustment, and are not to be included in the appraisal adjustments. This is why the Coalition<sup>2</sup>, has gone back to Congress for help.

##### **4. Appraisals are to be performed every 10 years.**

Under the previous rules, appraisals were done every 20 years. In the interim, annual adjustments were made. It was questionable whether the chosen annual adjustment amount accurately kept up

with the change in land values. Further, when appraisals are done only every 20 years, only the most senior cabin owners remember the process, and seldom was there anyone left in the Forest Service who did. For those reasons, CUFFA requires appraisals to be done every 10 years. This means that a number of tracts had appraisals that are already more than 10 years old when CUFFA became implemented. As we shall see later, this has resulted in complications in the transition rules from the old rules to the new.

## **5. A Note about Sleeping Cabins**

Under the old rules, an extra 25% of the fee was added for any additional sleeping structures. This additional fee was removed by CUFFA, and the new regulations recognize this.

## **CUFFA's Details**

### **What's Actually Being Appraised**

#### **Definition of the Lot**

The new regulations direct the appraiser to

“...evaluate the market value of the fee simple estate of the National Forest System land underlying the typical lot or lots in a natural native state. However, access, utilities, and facilities that service a typical lot and which have been determined by the authorized officer to have been paid for or provided by the Forest Service or a third party, shall be included as features of the typical lot to be appraised.” (sec 33.4)

To paraphrase this section, the appraisal will focus on the typical lot without considering the cabin itself or any other improvements paid for or provided by the cabin owner. It does include the value of any improvements provided by the Forest Service or by third parties where it can be determined that the cabin owner did not pay for the improvement. We will have more about the determination of who paid for improvements later.

The section quoted above directs that the appraisal be done of the lot, which is defined as “...a parcel of National Forest System land on which a holder is authorized to build, use, occupy and maintain a recreation residence and related improvements.” While CUFFA limited the appraisal to the lot, the Forest Service regulations expanded the definition of the lot somewhat, to make clear that off-lot improvements are allowed to exist by virtue of the permit itself. This does not mean, however, that those improvements change the size of the lot being appraised. CUFFA makes clear that any improvements provided by a cabin owner cannot be included in the subject of the appraisal, so clearly the value for an off-lot water system, septic system, dock or other improvement built by the cabin owner cannot be included. So what does this expanded definition mean?

NFH has had a number of discussions with Forest Service staff, and it is clear that there is no intent to change the terms of CUFFA. The issue is one of appraisal theory. If a lot has a water system that happens to be off-site, then the lot has a value as a location where water is likely to be available. It is different in value from a “dry” lot where there is no water at all. The same argument applies to a lot with a septic system off-lot, as opposed to a lot located where no such system is feasible due to soil (or rock) type. If a permit for a lot includes an off-lot dock, then that lot has a greater value than a lot where no docks exist or are allowed. It is not the actual off-lot improvement that is being added to the value. It is the fact that such an improvement is possible that may add to the value.

### Typical Lots & Groups

Just as in the pre-CUFFA process, rather than conduct an appraisal of each of the approximately 14,500 recreation residence cabin lots across the U.S., the appraisal process values a smaller number of cabin lots selected as having the same or similar value characteristics within each cabin tract. The selection of “typical” lots begins with the division of the cabins in each tract into typical lot groups. In many tracts, the typical lot groups are defined by whether cabins are water-front, water-view or water-influence. Access (even road surface type) is another factor that might distinguish typical lot groups. The Forest Service is directed to seek the concurrence of the cabin owners in the definition of typical lot groups, but does have the authority to proceed without concurrence if necessary.

Once typical lot groups have been defined, one cabin from each group will be identified as economically typical of the cabins in each group. This typical lot will be appraised as representative of all others in its group and the results of that appraisal used to determine the base cabin user fee for all cabins in that group.

CUFFA regulations do allow the Forest Service authorized officer to make adjustments to the base cabin user fee for “measurable value differences” between lots covered by the same typical lot on the advice of the Forest Service Review Appraiser. If the typical lots are properly chosen, NFH believes that this should never happen. While this regulation appears to be an escape valve for errors, this exception reinforces the importance of ensuring that measurable value differences are properly recognized in the definition of typical lot groups rather than leaving open the possibility of Forest Service staff making their own value adjustments on a lot-by-lot basis. This is why it is so important that you participate early in choosing the typical lots.

### **Comparable Sales**

#### What Can Be Used as a Comparable Sale

The best comparable sale would be a bare lot with the same access, location type, amenities, use limitations, and be in a location with similarly sized and styled improvements -- the same type of “neighborhood” -- around it. To say that such comparable sales are difficult to find is an understatement. This led to problems last time, and to the provisions in CUFFA that were intended to prohibit the use of comparable sales from urban areas. Urban is now specifically defined in the FS Handbook as a mature neighborhood with a concentrated population as is in a city, but the language is intended to focus the appraiser, once again, on the “neighborhood” factors. Use of sales in conservation or recreation easement areas held by a government or institution (think of the Sawtooth National Recreation Area) are discouraged except under very limited circumstances. Because CUFFA was intended to make clear to appraisers the nature of a Forest Service cabin, appraisers should not use comparable sales in resort areas, with homes built on lots there often on the high end of real estate prices. It is crucial that the comparable sale is in an area with a neighborhood similar to that of the typical lot’s neighborhood. From a practical point of view, however, while the appraiser looks for locations similar to that of the cabin lot, he or she may be forced to take what is available, and adjust as appropriate. Once again, we are seeing comparable sales from resort subdivisions.

It should be noted that while we are comparing a cabin’s lot with a sale of private land, the new rules retained the direction from the old rules that the appraisal is required to value typical lots for their authorized use. This means that the “highest and best use,” at which appraisers are required to appraise real property, for a cabin lot, is for the authorized use, a lot suitable for use as a recreation residence lot and not for anything else. By extension, the best comparables will have similar legal and physical factors that render the comparable to a similar “highest and best use.” Often the comparables can be used as a primary or permanent residence and their “highest and best use” is not as a recreation residence. There should be an adjustment of value.

### Adjustments to Comparable Lot Value

Once generally comparable sales have been identified, the matter of improvements and amenities must be considered. Unless the amenities of the comparable lot are the same as the cabin lot's amenities, then adjustments should be made to the comparable sale if the differences would result in a difference in market value. CUFFA focuses the appraiser on certain specific adjustments that are usually made in any appraisal, and adds a general category for any other difference that might be applicable. The specific list, those "value adjustments," reorganized somewhat, is as follows:

Location. This is a big topic. It includes geography, topography, neighborhood, and could be used to include some of the limitations on our use. Examples of geography include the state and the location in the state. Each has a bearing on land values. Topography includes proximity to a water feature. Is the lot right on the lake or stream, or set back? Does the lot have a view and of what? Is it next to a busy road with road noise? Is the lot on a steep slope? All have a bearing on value. We believe that this is also the place to consider the "neighborhood" of the comparable sale. Resort and urban areas generally encourage and allow houses that are much larger and more lavish in style than the typical permitted cabin. Comparable sales from these areas should not be used whenever possible. Thus, if there is a sale in a neighborhood characterized by large upper-end homes, even if it is on land located across the same lake as that of the cabin tract, the fact that those are large, upper end homes makes that comparable sale inappropriate. The neighborhood around the typical lot is not the same even if the geography and topography is the same. If there really is no other choice of comparable sales, then there should be large adjustments in the market value to differentiate these lots from cabin lots. Unfortunately, we are finding that these adjustments are not being made.

There is a consensus that the consideration of location also includes some of the restrictions on the use of the lot, such as a local rule that closes a road for portions of a year. But the Forest Service limits allowable adjustments to those restrictions that are not permit related. Without this reading of the language in CUFFA, appraisers would take all the permit related restrictions into consideration, also, just as zoning considerations have an effect on the value of private land. We believe that an interpretation of CUFFA that allows all adjustments for the limitations on our use of our cabins is the proper interpretation, and one that results in a true reflection of the value of what the forest service provides. While the Forest Service does not agree, we recommend you provide as much of the information to your appraiser as possible to highlight those distinctions. This may be useful to you later either in an appeal or in our attempt to obtain relief from Congress.

We believe that local and regional rules that limit use should also be considered when they affect market value. We can see from the current appraisals now coming in from across the country that these are being recognized in a spotty manner. Beside regional or forest-wide limitations to the size and style of the cabin or to any other improvements on the lot, are you limited to two cars? Do you have to remove your boat trailer from the lot even when it's boating season? Make a list of all your limitations for the appraiser. Let the appraiser decide. Some limitations fall way outside of limits seen on private land, and should have an effect on the value of the lot. Remember, the appraiser is not valuing the cabin, but is valuing the typical lot based upon differences in size or type of what can be built on it as opposed to what is possible on the comparable sale lot. Some of these factors might slide into the "neighborhood" consideration, and be acceptable to the Forest Service if the matter is not otherwise resolved before your appraisal is completed.

- Weather. This is a much easier category. Do winter conditions restrict access to only certain months? Floods? Slides caused by heavy rains?
- Access. Access to cabins varies widely. How are the roads to the lot? Are there any provided by the Forest Service or a third party such as a county road or one put in by a utility company?

- Remember, if it's a cabin owner or association road, the lot is appraised as if it had no access. Is access by trail or boat? How does this affect the value in the marketplace? Don't forget that any adjustments to value where the comparable sale has these improvements must take into consideration both the remoteness of the location (extra move-in fees may be required for heavy equipment) and the risk of unknown conditions (such as the location of a large and expensive to move boulder). Be sure to remind the appraiser of this if it applies to your typical lot. Either in the Forest plan, Regional rules, or in other laws such as the Clean Water Act, is access otherwise limited, and how? How does this affect the value of a lot in the marketplace? Note this provision is focused on access, not lot improvements. How is the typical lot's access different from that of the comparable sale lot?
- Timber. The presence of marketable timber should not be of value on the typical lot, as we cannot log our lots. Does the comparable sale lot include such value? On the other hand, the typical lot may be more valuable if it has some trees, as opposed to a barren lot. What is the effect in the market place where the cabin lot is located?
- Limitations on services. Any limitation on such services as law enforcement, fire control, road maintenance, or snow plowing should be noted if those limitations are different from those on that "comparable" sale lot. There may be cell phone problems with no other source of telephone coverage. And don't forget sewers and electricity. If your lot does not have some or all of these amenities but the comparable property does, then there should be adjustments in the value to reflect these differences.
- Condition of the site improvement. This usually puts focus on the effect on the value of the comparable sale lot due to the condition of the structures on it.
- Regulatory compliance of site improvement. This also focuses on the effect on the value of the comparable sale lot due to local zoning conditions.
- Any other typical value influence described in standard appraisal literature. This "catch all" provision was added to ensure that no factor that affects value is left out.

As the Forest Service has chosen to interpret CUFFA so as to preclude the appraisals from taking into consideration any of our permit restrictions, taking the same exact position they took before CUFFA was passed to change just that, National Forest Homeowners and a number of other cabin owner groups including American Land Rights Association, Washington State Homeowners' Association, Oregon Forest Homeowners Association, Diamond Lake Homeowners Association (OR), Sawtooth Forest Cabin Owners Association (Idaho), Priest Lake Association (Idaho), Lake Wenatchee Summer Home Association (Washington), Mt. Hood Forest Homeowners Association and with the help of individual members in Wyoming, Arizona, Tennessee and Florida, have joined together in a group now known as the Cabin Coalition<sup>2</sup>, or C2. Included in this version of this booklet is Appendix D, from C2. This group is working on a solution to this problem, and we will keep you informed of its progress on the NFH website.

### **Consideration of Improvements in the Appraisal**

The CUFFA appraisal process requires that the appraiser exclude most improvements on the lot. Anything the cabin owner built, or a third party built when the Forest Service cannot show who paid for the improvement, is not included in the value. If the Forest Service provided the improvement, such as a road, or a third party paid for it, then the value of the typical lot includes the value added for the improvement. The appraiser must know exactly what the typical lot's access and improvements are, both on and off the lot.

### The Inventory of Improvements

Some time ago, the Forests were told to create an “inventory of improvements” for each tract. “Improvements” here means items other than the cabin and outbuildings, such as roads, power lines, sewer systems, water systems, and the like. There was a standard form drafted in the Washington, D.C. office for this, and some instructions for the rangers in the field. Cabin owners were supposed to “sign off” on those lists, but many of those efforts stalled in the field after CUFFA was passed.

In a number of locations these lists have errors. Those errors could significantly affect the final value assigned to the typical lot. A review of the improvements of each lot might also clarify the need to change which lots are chosen as typical. Each lot covered by the typical lot should have the same access, water availability, utility availability, and location type (such as on the lake or up the slope).

As the value of the lot does not include the improvements paid for solely by the cabin owner, the list should make this very clear. For example, in many tracts the character of the roads may vary. Some roads in the same tract may be paved, while others are dirt. Some may be provided by the Forest Service, while others were paid for and maintained by the cabin owners. And some may be jointly maintained by the cabin owners and the Forest Service. Lots whose access is off each of the different kinds of roads within the same tract will have different values. Those lots whose access is off a cabin owner road are valued as if there were no road yet to it. Those off a paved Forest Service road are valued as including that easier access. Although CUFFA does not address this directly, common sense says that jointly maintained roads should have some fractional adjustment.

All these inventories should be reviewed by the affected cabin owners to make sure they are correct. These completed inventories will be provided to the appraisers when they begin their appraisals on our lots. It is not the appraiser’s job to determine whether the inventories are correct or not. These are prepared by the local Forests, and cabin owners need to be involved with the preparation of the inventories to make sure they are correct. You will want to be sure your typical lot’s inventory is complete and accurate. And it is best to complete this job before the appraisers are invited to make their bids for the job, as any change could affect the bids.

Once the inventories are completed, it can be seen whether the previously chosen typical lots are still typical of the lots they represent. This may have changed from the last time an appraisal was conducted. Previously graveled roads may have been paved since the last appraisal. Each typical lot should have very similar improvements as the other lots of which it is supposed to be typical. Now is the time to make sure the typical lots are really typical, not at the first meeting with the appraiser.

### Third Party Improvements

CUFFA made clear that the value of the lot should not include any inventoried utilities, access and facilities that were paid for by the cabin owner or the cabin owner’s predecessor, while improvements paid for by the Forest Service or by a third party should be included in the value of the lot. We would not be surprised to see disputes arise regarding the determination of who paid for the capital costs for improvements made by third party entities.

CUFFA squarely places the burden of documenting the payment of capital costs by third parties on the Forest Service, stating that the Forest Service must produce “evidence that the agency or a third party has paid for the capital costs” or it shall be “presume(d)” that the cabin owner provided it. The regulations change this somewhat, adding a presumption to be used in certain cases when there is no specific charge by a utility for the installation of an improvement. Cabin owners should press their local Forest Service officer to share any documentation of payment and, if there is inconclusive or no evidence, then argue that

the presumption according to CUFFA must be that the cabin owner provided the improvement. Some research may be necessary to argue this. It should be interesting to see what various utility companies have for records of the cost of installation and how this was paid for, especially in the early part of the last century. It is NFH's position that if the Forest Service cannot show that a third party paid for the utility, access, or facility, then the lot should be valued as if it does not possess that utility, access, or facility. The regulations cannot directly contradict the law.

### Moving To a Fair Fee

Remember that this process is intended to reach a resultant fee. It uses an appraisal of a lot in its original state. It prevents or discourages the use of certain areas for comparable sales. It ensures the consideration of all reasonable adjustments.

Also remember that a recent sale of an actual cabin in the tract has nothing to do with this process. This is not an appraisal of an actual cabin. Cabins sell in the marketplace based upon supply and demand, just as in the sale of private land. There are few of these cabins, however, and using 5% of the actual sale values may not result in a fee that makes sense for this use. The fee determination system focuses on private sales of bare land, and multiplies the value times 5%. This is supposed to result in a fee that is a fair one for this recreation residence use permit.

### **For More Information**

Appendix A includes a list of the citations in CUFFA and its regulations for all of the provisions discussed here in the event you need them to argue your point on your appraisals. Appendix B contains a sample letter to the appraiser, with suggested exhibits. Appendix C contains a detailed list the possible "value influences" which could affect your appraisal. Appendix D was produced by the reconstituted coalition of cabin groups, Coalition2, who are all concerned about the current interpretation of the appraisal rules, and the resulting fees.

## **CHAPTER 3**

### **Transition to the New CUFFA Rules**

#### **The Transition Period**

The Cabin User Fee Fairness Act (CUFFA) was drafted and became law in an attempt to remedy problems encountered in the appraisals performed before its signing in October of 2000. Thus, it suspended implementation of those appraisals until its rules and regulations became effective. Cabin owners had two years after those rules and regulations were final, through May 2, 2008, to make some choices. As that date has now past, the discussion of those choices has been eliminated in this edition of this booklet.

If you have a questions about an issue arising out of this transition period, please consult an earlier version of this booklet. We will keep the old version on the website as well as this version.

#### **New Issue: Fees Based on Pre-CUFFA Appraisals**

Our annual permit fees are collected at the beginning of each calendar year. No fees based on any appraisal can be collected until one year after the notice of its resultant amount is received. The first post CUFFA appraisals were done in the summer of 2006 in Region 10 and in varying locations in 2007. Some have yet to be started.

Several forests in Regions 2, 3, 8, and 10 sent actual notice of the fee resulting from their appraisals in order to allow collection in 2009 of the resulting fee. Many others, however, did not receive official notice until 2009 making their new fees collectable for the first time in 2010.

In the meantime, CUFFA provided that after 2009, permit fees for those with post CUFFA appraisals were to be calculated differently from the 2008 fee plus the annual index. For those cabin owners whose pre-CUFFA appraisals were prevented from going into effect immediately after they were done in 1999 or 2000, the 2009 fee is based on the pre-CUFFA appraisal value. This will continue until their post CUFFA appraisals are done and go into effect.

Making the calculation of that new fee more interesting is that the annual index continues to be used since the 2001 fees, the first ones billed after CUFFA. So the 2009 fees not only reflect the pre-CUFFA appraisal values. They also are indexed from 2001 to 2009.

If the resulting fee goes up by more than 100%, the new fee is phased in over three years. The Forest Service has an Excel chart to calculate these fees.

There was additional confusion when, in late 2008, the prior Undersecretary of Agriculture, Mark Rey, after congressional pressure to do so, directed the Forest Service not to bill the 2009 fee as more than the 2008 amount plus the annual index. This was called a moratorium on pre-CUFFA fee billing. After the change of administration, the Forest Service obtained a legal opinion that was used by the new Secretary of Agriculture to reverse this decision.

In the confusion, cabin owners in the field received conflicting letters about the amounts of their bills. Then Congress provided a partial moratorium on the fees, capping any rise at 25% of the previous year's fee. Those bills trigger a 45 day period in which to appeal the fee and request a stay of the increase pending appeal. It is the Forest Service's discretion to determine whether to grant the stay or not. In the meantime, the fee still had to be paid.

Further, while the C2's effort, the Cabin Fee Act (CFA), was introduced in 2010, it was not passed and has to be re-introduced each year. As this is written, the CFA's 2011 introduction is still pending. In late 2010, the Forest Service, attempting to avoid the previous year's confusion, billed fees the same as last years' fees plus the index amount for most cabin owners, expecting changes momentarily. It's now April of 2011. Bills for the remainder amount could go out any day.

## **Chapter 4**

### **The Next Appraisal Cycle**

One specific change made by CUFFA directs that base cabin user fees shall be recalculated no less than every 10 years, rather than the required every 20 years under the prior regulations. Since the last appraisals were done beginning in the mid-1990's, new appraisals under the 10-year cycle began in 2006 and will continue through 2011 (lack of funding has resulted in delays). To prepare for your tract's appraisals, there are specific actions that cabin owners and tract associations should take. Doing so will increase the likelihood that your new appraisal will result in a fee that is reasonable for your location and lot.

#### **A Note About the Appraisers**

The Forest Service has a staff appraiser in each of its Regions, called the Regional Appraiser. Under that person may also be a Review Appraiser. Either of those staff people may be assigned the job of obtaining the appraisals in your tract. This person will review competing bids and choose the independently contracted appraiser who will actually prepare the appraisal(s). The person who actually prepares the appraisal is the "contract" appraiser.

#### **Get Organized**

Search among the cabin owners in your tract. Are there cabin owners who were involved in the last appraisals and others with real estate expertise? Those who were involved in the last appraisals will already be familiar with the basic process and the typical lots in your tract. Real estate agents and brokers will have access to recent data on property sales in the general vicinity of the tract or cabin. Create a group including these individuals and other cabin owners to represent your tract in the appraisal process. Be sure everyone reads this booklet and, perhaps, the underlying law and rules so that everyone fully understands what will occur during the appraisal and what has changed under the new rules.

#### **Review Your Typical Lot Groups & Selected Lots**

The division of the cabins in your tract into typical lot groups and the identification of one cabin from each group as the "typical lot" to be appraised are critical to obtaining a reasonable valuation and annual fee. Start with the typical lot groups that were used in the last appraisal. The lots in each group should share similar "market characteristics," the most obvious example of which will be whether they are water front, water view, or water influence lots. Other factors that could constitute a measurable market difference are limited access or a steeply sloped lot. The presence of such market differences within a typical lot group would be reason to request that the Forest Service create another typical lot group within your tract. Remember, the important difference will be those that would likely result in a different sale price if two different lots were being sold.

Once your typical lot groups have been reviewed and possibly modified, check to see if the typical lot for each group that was used in the last appraisal still makes sense. Do all the lots grouped under that typical lot share the same type of improvements? If not, is there a difference in value that might be placed on that difference? If so, talk to the Forest Service about changing the typical lot. The rules say that this selection must be made by agreement with the cabin owners, and the Forest Service officer will rely on the advice of the Review Appraiser. Make sure that the typical lot really is about average for the group – neither the worst nor the best location in the tract.

Review of your typical lot groups and typical lots should be completed before the Forest Service prepares

its request for bids for the appraisals. That request will need to include a clear description of the work to be done, including the number of lots to be appraised. If necessary, however, the Review Appraiser can help decide whether there are sufficient market value considerations to warrant the choice of a new typical lot.

### **Inventory of Improvements**

The Forest Service is responsible for identifying, documenting and inventorying all utilities, access and facilities that service each of the typical lots in a tract. Start with requesting the inventories for your typical lots from your Forest (usually the Special Uses staff). If you are requesting that the typical lot be changed, or are creating new typical lot groups (as discussed above), there won't be inventory information for the new lots and you'll need to see that the "Inventory" documentation is developed for them.

Here is an example of the types of utilities, access and facilities that should be included:

- Potable water systems;
- Roads, trails, air strips, boat docks and water routes used to access the lot of tract;
- Waste disposal facilities; and
- Utility lines, such as telephone lines, fiber optic cable, electrical lines and cable TV.

For each utility, access or facility identified, the inventory is to include the Forest Service's determination of who paid for the associated capital costs.

Your review should ensure that the inventories are complete and correct. Are there any utilities, access or facilities that are missing from the inventory or incorrectly included? Next, check who is indicated as having paid for the capital costs (the cost of installation). Are improvements attributed to the right parties? Are there improvements listed as provided by third parties so that the value of the improvement will be added to the lot? If so, be sure to discuss this with the Forest Service. Is there something showing who paid for the capital improvements, that is, the installation of the service? If there is no evidence, the regulations direct that an improvement is to be presumed to have been provided by the cabin owner and that improvement is not included in the value.

### **On-Site Appraiser Meetings**

Either the Regional or Review Appraiser will select a qualified contract appraiser after consideration of the bids that are received. Once a contract appraiser is selected, notice will be mailed to all cabin owners in a tract providing an opportunity to meet with the Forest Service Regional or Review Appraiser and the chosen appraiser, and providing the date and time of an on-site inspection of the typical lots. There should be at least 30 days written notice of this meeting. Be sure the official permit holder for your cabin knows to expect this notice and informs all the interested family members about the meeting.

Meetings with the contract appraiser are encouraged in the rules either as a group or as an individual. This is also the time to discuss the typical lot if there are any last minute concerns. In the event of a disagreement, the Forest Service authorized officer will pick a typical lot with the advice of the Regional or Review Appraiser.

## Assisting Your Appraiser

As a general rule, the more complete and accurate the information that the appraiser has on your typical lots and tract, the better their appraisal report is likely to be. The regulations provide that the appraiser include certain documentation in his appraisal. We know from the last appraisal cycle that the Forest Service personnel may not always be the best source of information about your tract. Thus, the on-site meeting with the appraiser is your best opportunity to acquaint the appraiser with your tract, the typical lot groups, and especially, any special conditions that you believe should be taken into account in the appraisal.

The contract appraiser may choose not to include your information in his appraisal, but we believe he or she does so at his or her peril if important market related information is omitted from the appraisal. Appraisers are sensitive about seeming to be directed to use or not use certain comparable sales. Be politic in your approach, and focus sharply on market based differences.

We recommend that the local cabin owners prepare a formal packet of information for the appraiser that provides background information and useful information. Possible contents for this packet might include:

Cover Letter & Contact Information. A cover letter to your packet is an opportunity to introduce your tract association and appraisal committee. Provide contact information in case the appraiser has questions about factual issues on the ground. Make it easy for the appraiser to resolve any issues that arise. In Appendix B, we've included a sample letter.

Tract and Area Maps and Typical Lot Groups. Provide the appraiser with easy to use maps of your tract with clear identification of the typical lots and a listing of the cabins in each typical lot group. (Yes, they should also receive this information from the Forest Service, but make their job as easy as possible.)

Identify and Profile the Typical Lots. Provide a lot plan, description, photos and inventory of improvements for each typical lot in your tract. Yes, the appraiser should be either receiving this information from the Forest Service or preparing this also, but this is your opportunity to make your case before the appraiser begins selecting comparable sales.

Review of Prior Comparable Sales and Identification of Possible Current Sales. Review the last appraisal and see where the comparable sales were located. Were they from an appropriate area? If not, and if there are sales from this area relevant to the time frame of this appraisal, be sure to tell the appraiser why you don't view sales from this area as an appropriate comparable sale. Were any sales from a resort or urban area that CUFFA discourages? Do the comparables have similar "highest and best use"? If not, did the appraiser make an appropriate adjustment as a result? Is the sale in a different neighborhood type? If you have a recommended area from which to pick comparables, tell the appraiser. If you have a list of sales which the experts among you may have been able to collect, this is the time to present them to the appraiser. Tell him or her about the adjustments you believe should be made to those comparables, and why. Pictures of those comparables are useful, too.

Identify and Explain Any Special Restrictions To Use. Make a list of those limitations on the use of the cabin lot that were discussed in earlier chapters here. If your Forest Service Region or Forest has specific guidelines that are not permit related, at least these are clearly allowed as an adjustment to value. If they are restrictions on the construction, maintenance and use of cabins, they may be

backed into consideration as part of the neighborhood consideration. It never hurts to make sure the appraiser has these guidelines and understands their local impacts. Call to the appraiser's attention anything that might make a difference in value. Appendix C contains a list of such features that an appraiser commonly takes into consideration in addition to those listed above on pages 10 and 11.

## **The Final Result**

After the appraisal is complete, it is sent to the Forest Service Review Appraiser. It may take some time for this review, as it may include an on-site inspection of all the comparable lots. Once the report is reviewed to be sure it complies with all the rules, then the Forest Service authorized officer accepts it. Once this occurs, all permit holders covered by that appraisal will receive written notice of its acceptance and a summary of the resulting valuation. A copy of the report associated with your typical lot and supporting documentation will be made available on request.

The CUFFA regulations contain a provision that the authorized Forest Service officer may make adjustments for measurable value differences between lots within a typical lot group on the advice of the Review Appraiser. The presence of "measurable value differences," however, appears also to be the basis for creation of separate typical lot groups. NFH feels that such differences should be recognized in the identification of typical lots and not by the adjustment to specific lot valuations by Forest Service staff.

Once notice has been given to all permit holders, each then has 60 days in which to decide whether to ask for another appraisal. This decision does not have to be made by a majority of cabin owners in each typical lot group, unlike the Transition Period rules. It can be made by individual cabin owners but will affect all those in the relevant typical lot..

If the value is higher than you think appropriate, you will want to physically inspect the comparable sale properties to be sure that they are not too urban or too dissimilar. You have to be able to reach those properties, and if the notice is given you in winter, you may be unable to reach them due to snow. NFH discussed this problem with the Forest Service and their staff appraisers are aware of this problem. Thus, some notices of appraisal acceptance may be delayed until the tract areas and comparable sale properties can be accessed to allow meaningful review of the appraisal. By the time you have reached this point, you should have a good idea what to look for in the adjustments to value. You should be presented with market evidence of any amounts of those adjustments, and if that information is not there, you should inquire about it right away. Our experience is that you cannot always tell from the face of the appraisal whether those comparable sales are truly comparable. Sometimes, just outside of the frame of the camera, you will find evidence that the "neighborhood" is quite dissimilar.

## **Requesting a Second Appraisal**

CUFFA provides a right to obtain a second appraisal. A notice of your intent to obtain a second appraisal must be made in writing to the Forest Service within 60 days after receipt of the notice of the new base fee from the first appraisal. Be sure to say it is mailed within those 60 days, as there will be no evidence of receipt. You might want to send this by certified mail, return receipt requested, to make sure you preserve your rights. We recommend everyone make this request. It does not require you to submit a second appraisal, but without the request you waive your right to do so.

Counting from the date of your receipt of the notification of your new fee, the second appraisal must be prepared within one year. The cabin owner pays for the second appraisal, using the same date of value

(and typical lot) as in the earlier appraisal. The cabin owner picks the appraiser with the same equivalent qualifications as the original appraiser. This new appraiser must have written approval from the Review Appraiser before you proceed. You will want to join together with other cabin owners covered by the same typical lot to share the cost of this appraisal. The second appraiser receives a copy of the first appraisal and all the instructions that the first appraiser received and, in addition to preparing the second appraisal, will prepare a report listing the differences in fact or opinion between the first appraisal and the second.

If the cabin owners want this second appraisal to be considered, then a request for review by the Forest Service appraiser must be sent to that appraiser within 60 days of receipt of that report. If the second appraisal is accepted by the Forest Service after approval by the Review Appraiser (who has no set time in which to do this step), the typical lot group must send a written request for reconsideration of the resulting fee to the Forest Service deciding officer within 60 days of the date of the second appraisal. The officer then has 60 days to review the documents and notify the cabin owners in that typical lot group of a fee chosen. That fee can be pursuant to either appraisal or anywhere in between. The Resolution of Issues section of 36 CFR 251.93 can be used to negotiate the fee after the request for reconsideration from a second appraisal. This should be done before the decision is made on the resultant fee. CUFFA provides specific direction that this may be appealed administratively if there are remaining problems.

### **The Final Fee**

CUFFA provides for a phase-in of new fees in the event that the new fee is greater than a 100% increase from the amount of the most recent fee assessed. The new fee is phased in over a three year period. A chart showing how to calculate this is provided in supplemental regulations issued by the Forest Service and is available on the NFH website.

Finally, if the annual adjustment factor applied to the fee ever is greater than 5% in one year, then the factor is limited to 5% for that year, and the remaining amount of the fee is added to the fee in subsequent years whenever the factor is lower than 5%.

### **The Right of Appeal**

In addition to the right to request a second appraisal, the permit holder has 45 days after receiving the actual bill in which to appeal the fee. At the time of the appeal notice, a request to stay the fee increase can be requested. It is up to the Forest Service to decide whether to grant the stay or not.

This does not avoid payment of the bill. You must still make the payment to avoid violating the terms of the permit. It may, however, prevent a further billing in the increased amount. When the work in Congress is finalized, there may be a provision for some sort of credit for these permittees.

In the meantime, permit holder throughout the program have been using an appeal of their fee as another method of reducing their bill with mixed results. Often the Forest Service has not followed their required procedure, and this has been successfully used to require the process to be backed up in time. National Forest Homeowners now has a separate handbook on fee appeals. When you reach this stage, you should consult that handbook.

We at National Forest Homeowners hope that this booklet encourages the active involvement of cabin owners and tract organizations in their local appraisal process and helps to bring about appropriate and affordable use fees. We encourage your comments and suggestions to improve this publication and are available to help you through the process at our toll-free number (1-800-669-1971) and by email at [nfh100@yahoo.com](mailto:nfh100@yahoo.com).

# Appendices

## Appendix A: Citations for CUFFA and its Regulations

### CABIN USER FEE FAIRNESS ACT CITATIONS

Note: Sections cited below are those in the United States Code where the Cabin User Fee Fairness Act will now appear. For those of you who have the Federal Register version, you will see that the sections are labeled differently, so we have included those section numbers in parenthesis.

16 USC Section 6201 (601) Title

16 USC Section 6201 (602) Findings

16 USC Section 6202 (603) Purposes

16 USC Section 6203 (604) Definitions [15 of them]

16 USC Section 6204 (605) Administration: fee shall reflect (“in accordance with this”) market value of lot and regional and local economic influences

16 USC Section 6205 (606) Appraisals [meat of the law]

(a) Requirements

1. FS makes inventory of improvements paid for by

A. FS

B. third parties

C. cabin owner or predecessor

Presume that cabin owner or predecessor paid for capital costs of improvements unless

FS produces evidence that the FS or third party paid for them.

2. Establish appraisal process to determine market value of typical lot as if held in private ownership [fee simple estate] and considered in natural and native state, subject to subsection (b)(4)(A) [value adjustments]

3. Contract with appraisal organization to manage development of guidelines of subsection (b) below, with public comment and congressional review (the regulations)

4. Appraisal to be done by state certified general real estate appraiser, licensed by the state in which the lot is located.

5. Give appraiser copy of the guidelines.

6. Appraiser must coordinate closely with “affected parties,” seeking information, cooperation and advice from cabin owners and tract associations notwithstanding any other law.

7. Appraisal in compliance with:

A. most current edition of Uniform Standards of Professional Appraisal Practice [“USPAP”]

B. most current edition of Uniform Appraisal Standards for Federal Land Acquisitions [“UASFLA”]

C. guidelines developed for this law

8. Appraisal report shall be

A. full narrative report per USPAP

B. report per UASFLA

9. FS conducts review of appraisal before accepting: ensures complies and values properly supported.

(b) Specific Appraisal Guidelines

(1) Guidelines must instruct appraiser to at least do the following:

A. Conduct of appraisal

(i) do not appraise individual lots

(ii) appraise typical lot or lots selected by cabin owners and the FS

(iii) get inventory of improvements and give appropriate consideration to it

B. Estimate of Market Value of Typical Lot

(i) appraiser values typical lot “in accordance with” this law

(ii) legally subdivided lots will not usually represent comparable sales

(2) Exceptions for certain sales of land; Appraiser

A. shall not select sales of comparable land in developed urban areas.

B. should not select sales of comparable land encumbered by a conservation or recreation easement held by a government or institution, except land limited to use as site for 1 home.

(3) Adjustment for Typical Value Influences

A. appraiser to consider and adjust for value influences as listed below.

B. Value Influences include:

(i) differences in location

(ii) accessibility, including limits due to

(I) weather

(II) condition of roads or trails

(III) FS restrictions

(IV) other factors.

(iii) presence of marketable timber

(iv) limitations on or absence of services such as law enforcement, fire control, road maintenance, or snow plowing

(v) condition and regulatory compliance of and site improvement and

(vi) any other typical value influence in standard appraisal literature

(4) Adjustments to Sales of Comparable Parcels

A. Utilities, Access or Facilities

(i) if FS provides utilities, access or facilities then value of lot includes those features

(ii) if cabin owner or predecessor provides or provided utilities, access or facilities, then the value of the lot does not include those features

(iii) if a third party provided utilities, access or facilities, then the value of the lot does not include those features unless the FS determines that the cabin owner or predecessor did not pay for them

- (iv) Withdrawal of Utility or Access: by act of God or FS, there is a substantial and materially adverse change in:
  - (I) utility or access or
  - (II) qualitative feature of lot or immediate surroundings then
    - Cabin owner right to request (FS discretion to grant) new determination of fee (at FS expense).

B. Adjustment for Exclusion: adjust value of comparable sale when excluding utilities, access or facilities

C. Adjustment Process

- (i) adjust for all non-natural features of A(ii) above (excluded utilities, access or facilities)
- (ii) adjustment based on market or cost or both, but if cost, support by direct market evidence
- (iii) include analysis consistent with USPAP and UASFLA

D. Appraisals to be done not less than every 10 years

**16 U.S.C. Section 6206 (607) Fees**

- (a) fee equal to 5% of market value of lot *as determined per Section 6205* reflecting adjustment to typical market rate of return due to permit restrictions including:
  - (1) limited term
  - (2) absence of significant property rights attached to fee simple
  - (3) public right to access lot
- (b) caretaker fees not greater than typical
- (c) If determine not to reissue permit
  - (1) new fee for remaining term based on year 10 before expires
  - (2) each remaining 9 years par 1/10th times year remaining
- (d) If changed conditions means new permit: may require any portion of foregone fee
- (e) If act of God or catastrophe means lot cannot be safely occupies, fee terminated effective date of occurrence

**11 U.S.C. Section 6207(608) Annual Adjustment of Fee** [annually, and limit annual adjustment to no more than 5 percent, and apply excess fee to subsequent years when those years are less than 5%

**11 U.S.C. Section 6208 (609) Payment of Fee**

- (a) fees due annually, prepaid
- (b) if new base fee equal or lesser than current fee, pay now
- (c) if new base fee greater than current fee, then if greater than 100% phase in equally over 3 years

**11 U.S.C. Section 6209 (610) Right to Second Appraisal** [not later than 60 days after fee notice received, notify FS of intent to obtain 2nd appraisal on typical lot at cabin owner expense and obtain w/in 1 year following notice]

**16 U.S.C. Section 6210 (611) Right of Appeal or Judicial Review**

**16 U.S.C. Section 6211 (612) Consistency with Other Laws**

**16 U.S.C. Section 6212 (613) Regulations** [FS shall promulgate regs]

**16 U.S.C. Section 6213 (614) Transition Provisions**

- (a) for time under (b) below, charge fees:
  - (1) if lot not appraised since 9-30-95, fee in effect at time of enactment (Oct.2000) adjusted annually per IPD
  - (2) if lot appraised on or after 9-30-95
    - (A) fee in effect at time of enactment (Oct 2000) adjusted annually per IPD unless:
    - (B) if base fee increases more than \$3,000
      - (i) fee = 10-1-96 + \$3,000 adjusted annually per IPD
      - (ii) fees paid after request for new appraisal/per review: if request same and new base fee is 90% more than first appraisal, then fee difference assessed retroactively from preview appraisal, paid in 3 equal installments
- (b) Term
  - (1) lots not appraised since 9-30-06: charge fees per (a)(2)(A) until
    - (A) new base user fee determined per
      - (i) this title (new 10 year appraisal)
      - (ii) the CUFFA regs and rules and
    - (B) right to new appraisal exhausted (5-02-08)
  - (2) Lots appraised on or after 9-30-95: charge fees per (a)(2) until
    - (A) new appraisal or peer review changes to new amount
      - or
      - (B) 2 years after promulgation of rules (05-02-08)
- (c) Request for new appraisal/peer review
  - (1) can request not later than 2 years after promulgation (05-02-08)
    - if prior appraisal prior to 09-30-95 but before 05-01-06
      - (A) can ask for new appraisal under CUFFA
      - (B) can ask for peer review under CUFFA
    - (2) request by majority of cabin owners of typical lot
    - (3) on receipt of request new appraisal, FS conducts per CUFFA
    - (4) on receipt of request peer review
      - (A) FS gets peer review from appraiser's appraisal group
      - (B) if peer says appraisal inconsistent with CUFFA, then FS
        - (i) revise fee or
        - (ii) if cabin owners agree, do new appraisal
    - (5) cost shared by cabin owners and FS
  - (d) if no such request, use fee from appraisal conducted between 9-30-95 and date promulgation 5-01-06

## CUFFA REGULATIONS CITATIONS

[now appear in three places, the Code of Federal Regulations (the CFR), the Forest Service Manual (FSH) and the Forest Service Handbook(FSH). Those listed below are only the new regulations published to implement CUFFA, although some of the previous language is republished such as the validity of the recreation residence use and, thus, also appears below]

### 36 CFR Part 251 Procedures for Appraising Recreation Residence Lots and for Managing Recreation Uses Pursuant to the Cabin User Fee Fairness Act

#### 251.51 Definitions

*Recreation residence lot:* parcel of NFH land on which holder authorized to build use occupy and maintain recreation residence and related improvements.  
Lot considered in natural native state when 1st authorized.  
Not necessarily confined to platted boundaries.  
Includes all physical area used or occupied including ancillary facilities and uses by holder (eg septic, water, boat houses, docks, major vegetative modifications and so forth)

#### 251.57 Rental fees

(a)(3) base cabin user fee for recreation residence = 5% market value of the lot, established per CUFFA  
(i) each permit shall include clause FS shall recalculate fee at least every 10 years

### **FSM Chapter 2340 – Privately Provided Recreation Opportunities:**

#### 2340.5 Definitions

*Caretaker cabin:* residence authorized in limited cases to provide caretaker services and security to tract

#### 2347.1 Recreation Residences [Valid use]

7. Authorize community or assoc owned and maintained improvements under separate permit

#### 2347.12 Caretaker cabins

2347.12a 1: permits annual  
2. coordinate with local governments so no unreasonable demand for services  
3. If ceases use as caretaker cabin, may apply for recreation residence status  
2347.12b Caretaker Cabin use  
Need rarely justified when yearlong occupancy already authorized.  
May authorize when need security and other measures inadequate  
Base fee not greater than fee as recreation residence, determined:  
(1) same as similar lot in tract  
(2) when not in tract, same as similar typical in tract monitored

### **Chapter 2720 – Special Uses Administration**

#### 2721.23 – Recreation Residences

##### 2721.23d – Fee Determination

1. market value per appraisal, every 10 years

### **FSH 2709 – Special Uses Handbook**

#### Chapter 30 – Fee Determination

##### 33 – Rec Resid Lot Fees: assessed and paid annually

#### 33.05 Definitions

*Cabin* rec resid authorized

*Majority* more than 50%

*Market Value* amount prop could be sold willing seller and buyer... “giving all due consideration to all available economic uses of the property at the time of the appraisal”

*Natural, Native State* at time first authorized

*Rec Residence* privately owner, noncommercial residence authorized for personal, family, guest use, not permanent residence

*Recreation Residence Lot* see CFR251.51

*Related Improvements*

- (a) 36 CFR 251.51 and
- (1) outbuildings
  - (2) wood piles
  - (3) retaining walls
  - (4) picnic tables
  - (5) driveways and parking areas
  - (6) trails and boardwalks
  - (7) campfire rings, seats, benches
  - (8) lawns, gardens, flower beds, landscaped terraces
  - (9) manipulated native vegetation, except b1 below
- (b) but not
- (1) native vegetation manipulated for safety (defensible space)
  - (2) improvements tract or community assoc., w/separate authorization

*Term Permit* see 36 CFR 251.51 and FSM 2705

*Tract* established location in NF w/one or more rec. res. cabins

*Typical Lot* lot in tract representative of value characteristics similar to others in group w/in tract. One or more per tract. One or more cabin per typical lot if unique value characteristics

*Urban* mature neighborhood w/concentration of population re city

- 33.1 – Base Fees and Annual Adjustments
- 33.11 – Establishing New Base Fee
1. Base Fee 5% market value lot as determined by appraisal, recalc 10 yrs
  2. Notification New Base Fee
    - in writing, at least 1 yr ahead, new fee. If 2nd appraisal, new fee any time after end of 1 yr notice
  3. Effective Date: date of billing = date of implementation
- 33.12 – Phase-in of Base Fee: pay full amount if increase 100% or less  
if more than 100%, 3 equal increments over 3 yrs  
Exhibit to show calculations
- 33.13 – Annual Adjustment of Fee: use 2nd quarter change in IPD-GNP  
no more than 5% each yr.: if greater, apply in next years when index less than 5%  
Exhibit to show calculations
- 33.2 – Fees when on Tenure
- When notify discontinued use, minimum 10 yrs notice, fee 10 yrs before = base fee, then each subsequent yr. 1/10th base fee times yrs left  
Exhibit to show calculations
- If changed conditions:
- (1) if new 20 yr permit, recover fees evenly over 10 years
  - (2) if less than 10 more years, fee as if notice not given minus remaining years
  - (3) if more than 10 years but less than 20, recover fees computed per (1) for most recent 10 year period
- 33.3 -- Fee when Use Terminated per Act God or Catastrophe  
fee terminated effective occurrence  
refund remaining prorated fee  
if get in lieu, may credit refund to new lot
- 33.4 -- Establishing Market Value of Lot: by appraisal
1. by private contract appraiser licensed in state where lot. Select adequate training, competence. Sign Assignment Agreement FSH5406.12 sec.66, ex.04.  
appraisal of Typical Lot: FS may make adjustments for measurable value differences among recreation residence lots within a grouping based on advice of assigned FS review appraiser.
  2. appraisal compliance w/
    - a. USPAP
    - b. UASFILA
    - c. FSH 5409.12 section 66, ex.03 and
    - d. any case specific guidelines by FS
  3. comp. sales: of sufficient quality and quantity  
not usually equivalent to legally subdivided lot.  
not use developed urban areas, should not use conservation or rec easements, unless single home site and sufficiently comparable  
consider and/or adjust for typical value influences eg
    - a. location
    - b. access (weather, condition roads & trails, agency restrictions, etc )
    - c. marketable timber
    - d. limits on services (law, fire, road, snow)
    - e. condition and regulatory compliance of any lot improvements
    - f. other in standard appraisal lit.
  4. FS & appraiser gives minimum 30-day written notice of appraisal. At “the” meeting, advise of process, method, and Typicals.  
Opportunity to meet with appraiser concerning selection of Typicals.
  5. Appraiser gives 30 day cert. mail return receipt notice of site visit time(show this in appraisal addenda)  
At meeting, opportunity to provide appraiser with factual or market info in writing and show this info in appraisal report
- 33.41 Selection and Appraisal of Typical Lot  
only typical appraised.  
Before, FS every effort to obtain concurrence of permit holders  
Typical identified as “economically typical”  
Pick lot “economically competitive” w/all lots represented  
Document process in permanent case file for tract  
When can’t agree, FS picks w/advice of appraiser  
Document in file  
When inventory shows difference in lots in typical either:
1. establish new grouping
    - a. identify, with holders
    - b. prepare new inventory and
    - c. conduct new appraisal per CUFFA, expense split
  2. assign lot to other typical
  3. make adjustments to base fee (note inventory issues only)
- 33.42 Inventorying Utilities, Access, Facilities  
FS prepares this for each Typical  
Include determination of who paid capital costs  
Presume permit holder paid unless can document FS or 3rd part paid
- 33.42a – Types to include in inventory
1. potable water systems
  2. roads, trails, air strips, boat docks, water routes to access lot or tract
  3. waste disposal facilities
  4. utility lines (phone, cable, fiber optic, electrical)

33.42b – Criteria in determining who paid

FS collect all available evidence. In evaluating, criteria and principles:

1. paid by owner when
  - a. evidence of direct payment of costs of materials and installation
  - b. assessed and paid lump sum fee for construction/installation
  - c. paid temp. utility or tax surcharge
  - d. paid hook-up or tap fee
  - e. insufficient evidence to support 2-4 below
2. paid by 3rd party when:
  - a. installation w/out any lump sum or surcharge and hook-up or tap fees not intended to recover capital costs
  - b. roads installed by gov paid from general taxes
  - c. road or trail by cooperatior cost-sharing agreement w/FS
3. paid by FS when:
  - a. FS paid to construct
  - b. FS indirectly paid pursuant to timber contract
4. paid by FS or 3rd party when:  
existed prior to cabin first authorized in tract

33.5 – Appraisal Specs.; see FSH 5409.12, Sect. 65.3 and 66 exh.s 03 & 04.

33.6 – Review and Acceptance of Appraisal Report

33.7 – Notification of Accepted Appraisal Report and Right to 2nd Appraisal

Upon written request, FS:

1. provides copy
2. advises 60 days to notify intend to obtain 2nd
3. informs one year following receipt of notice to do 2nd at own expense

33.71 – Standards for 2nd Appraisal

33.71a – Appraiser qualifications [same as first appraisal]

33.71b – Appraiser Guidelines [same as first appraisal, but prepares separate document to note the differences]

33.72 – Reconsideration of Rec Res fee [once get the 2nd appraisal that supports this]

submit request w/in 60 days of date of 2nd report

W/in 60 days of request FS(authorized officer, not review appraiser)

1. review 1st appraisal
2. review 2nd appraisal
3. review material differences
4. establish fee = 1st, 2nd or in between
5. notify

33.8 – Establishing Fee during Transition Period

Transition period per CUFFA between date of enactment (Oct 11, 2000) and date fee established as result of implementation

Upon adoption regs, notify holders appraised since 9-30-95 that can:

1. ask for new appraisal pursuant to CUFFA
2. ask for peer review of existing report done since 9-30-95
3. ask for new fee per existing report done since 9-31-95

Requests 1-3 done by majority of affected lots of typical

FS provide name and address of each to others in group

1-3 only methods: if request 2, can't then get 1

33.81 – Use of Appraisal completed after 9-30-95

1. establish fee using 5% indexed to current year when:
  - a. w/in 2 yrs following regs, request in writing to do so
  - b. fail to submit w/in 2 yrs
  - c. peer review is requested and says complies w/CUFFA
2. new fee at time next billing cycle subj to phase in of 33.12

33.82 – Request for new appraisal

ask w/in 2 yrs regs. FS inform that must be in writing signed by majority,

pay 1/2 fee, and if old fee would be more than \$3000 from that on

10-1-96, must sign exhibit 01

33.83 – Request for peer review

ask w/in 2 yrs regs. FS inform that must be in writing, majority, pay 1/2, and if old fee more than \$3000 from that on 10-1-96, then sign Ex. 01

advised of cost up front. Report confined to whether CUFFA or not “and, if so, which provisions and to what effect.”

- a. if shows consist w/ CUFFA then FS establish 5% fee
- b. if shows not consist w/CUFFA FS either:
  1. estab. new fee consist. w/CUFFA or
  2. conduct new appraisal if majority requests

**FSH 5409.12 Appraisal Handbook**

Chapter 60 – Appraisal Contracting

65 – Contract appraisals for special purposes

65.3 Rec res lots: use service wide, no deviation

66 – Exhibits

1. Exhibit 03 Basic Specs
2. Exhibit 04 Assignment Agreement

## **Appendix B: Sample Cover letter for the Appraiser**

Dear \_\_\_\_\_:

You have been awarded the contract to appraise a typical lot in a cabin tract pursuant to the Cabin Users Fee Fairness Act. We, the cabin owners affected by this appraisal, have certain rights in this process, one of which is the opportunity to present to you our understanding of the nature of the typical lot and things that might be of relevance when performing an appraisal on it.

You should already have been provided a copy of the Cabin Users Fee Fairness Act. This law requires you to value the cabin lot as if it were vacant. All the structures on it were already paid for by the cabin owner(s). The Forest Service is entitled to receive a payment only on what it provides, or what a certain third party provided, not on something owned or paid for by a private party.

You should also have received a copy of the List of Improvements applicable to this lot. This list should tell you what improvements the Forest Service provided and what the cabin owners provided. [You might want to emphasize the improvements provided by the cabin owners, pointing out that if the road is a cabin owner improvement, then the lot is appraised as if it had no access. Point out the difficulties of adding a road, if you know there would be an extra move-in fee for the equipment, the possible risk of running into boulders. Same for power and water and the like]

Please note further that [discuss the issues applicable to this lot, including access (roads) issues, elevation (snow) issues, and other items that might affect value. Look at Appendix B, above, for a list of allowable adjustments, and Appendix C, below, for some further ideas.

We believe there are other documents that you should have. Thus, we are providing you the following:

- A copy of the special use permit showing what this typical lot really receives from the Forest Service [Use the one on the website that has relines showing extensive changes.]
- A copy of the Regional Rules applicable to this lot. [Or the Forest-Wide rules, and/or the inspection letter from the Ranger that told what had to be done to the lot in order to get a new permit, as this may contain some locally applied limitations or restrictions on use].
- A list of permit restrictions. We believe these limitations may have a bearing on the market value of the lot. [Use the list in the Appendix, below, as the starting point.]

We have also reviewed recent sales of property. In our last appraisal we found that comparable sales used from the \_\_\_ area were (or were not) appropriate because they were (or were not) in a neighborhood comparable to the type of neighborhood immediately surrounding our typical lot. While you are to exclude the value of the improvements on the lot, you are to consider the location as if this was an ordinary appraisal, and as in every appraisal, the neighborhood is a large factor in the value. The value of a comparable sale property if its use were limited to the building of a structure of the same size footprint of the cabin on the typical lot, would be less than if its use permits a large sized structure. [You might want to discuss recent appropriate comparable sales at this point, and say just what factors make them better comparable sales than others.]

Please be careful not to consider recent sales of actual cabins in the tract as an indicator of the value you are to find in this process. The appraisal process you are to use, including the concept of appraising the lot as in its natural and native state before the cabin use was authorized, and including the adjustments between comparable sales and this cabin lot to reflect differences due to permit restrictions, often reflected in neighborhood types, is intended to result in a value that will be the base for a multiplier to result in an annual fee that makes sense for this use.

We remain available to answer any question or need you might have. The following is our contact information with reference to this typical lot: [Insert your information here.]

## **Appendix C: Permit Limitations List to Give to Appraiser**

### **Conditions and Restrictions Affecting Recreation Residence Special Use Permits**

#### **Application to all permittees:**

- The use of the cabin lot by the permittee is not exclusive. The only portion of the lot to which a permittee has exclusive use is the area underlying the cabin. The general public is free to use all land not physically occupied by the cabin.
- Can only obtain a permit for the right to keep improvements on Forest Service land for a maximum term of 20 years.
- Permit termination can be made for another use during that term, unlike a lease whose term is definite.
- In the event of permit termination by the Forest Service for some other use, although fees are ramped down, the improvements must be entirely removed at the expense of the permit holder. This expense is complicated by the remote nature of the cabins. As a result, loans to finance the purchase of a cabin are nearly impossible to obtain.
- In the event that the Forest Service determines it needs the lot for another use, termination can happen in less than 10 years, resulting in a payment to the permittee of the “equitable” (determined by the Forest Service) value of improvements but avoiding the permittees’ expense to remove those improvements.
- Notwithstanding the non-exclusive right to use the lot to which the cabin is connected, the permittee is responsible for both on and off-lot liabilities, such as the removal of hazard trees.
- A cabin cannot be the permanent residence of its users. Neither can one be rented out except for a maximum of 2 weeks, and then only after prior approval of the permit administrator.
- In the event of substantial damage or destruction, rebuilding is not assured. A new determination is made as to whether a new cabin should exist on that site, and it may take years before a decision is made. Further, there is an option to provide an alternative location, but such option is limited and entirely left to the permit administrator’s philosophy about recreation residences.
- The permit is never transferred. A new owner must apply to the Forest Service after the Bill of Sale is completed for a new permit. A cabin owner during the sale process cannot make binding representation that the Forest Service will reauthorize the use.
- If the recent changes to the permit prevail, the permit will be considered a ‘license’ and not a contract. In addition, all water rights held by the permittees are of questionable ownership. Rules are changed without notice or permittee input.
- Permit fees set by capricious and unpredictable process that often create undue stress and render cabins unmarketable.
- Permittees subject to O & M plan specifications that do not apply in private market.

#### **Regional and Local Forest and/or Ranger Restrictions (vary from location to location):\*\***

- Limit on size of cabin, varies region to region (900 – 1500 sq. ft.).\*
- Limit on size of deck, porch/patio, varies region to region.\*
- Cabin may have an open loft, but a full 2<sup>nd</sup> story is not permissible.\*
- No guest cabin or auxiliary sleeping quarters.\* One outbuilding for storage allowed, limit on size & varies by region.\*
- Reconstruction or alteration of improvements requires advanced Forest Service approval: and all construction (including materials) must be reviewed in light of the National Historic Preservation Act, the Endangered Species Act (flora and fauna), the Clean Water Act, and archeological concerns. Inspection by all the people responsible for these areas of concern often takes a great deal of time.
- Exterior colors, including roofs, must have Forest Service approval. Location of and specification for materials protecting wood piles mandated.
- Fences/gates are not permitted. Satellite dishes are not permitted. Yard lights by approval only on buildings, no automated safety lights.
- No new permanent outdoor fireplaces are permitted. Fire rings of a temporary nature may be acceptable in some areas, while in others even a charcoal barbeque on a deck is prohibited.\*
- Only native plantings are permissible. Minimal lawn area allowed in some cases.
- Removal of vegetation, including hazard trees only with Forest Service permission and at cabin owner’s expense.
- Local rules often conflict with fire-safe mandates.
- Any exterior repairs/alterations must have Forest Service approval, whether other governmental agencies’ requirements are needed or not, i.e. county building permits.

- Cabin owners assume all risk of loss to their improvements resulting from acts of God or from a catastrophic event. The Forest Service will conduct an analysis and determine if rebuilding will be allowed.

\*Note: Existing improvements can currently remain if outside these guidelines. However, during replacement, maintenance and change of ownership of the cabin, and sometimes to obtain a new permit upon expiration of the prior permit, the Forest Service can require compliance with Forest Service standards. Requirements under the National Historic Preservation Act often result in limited ability to change the cabin in any way whatsoever.

\*\*Further Note: This listing is not all-inclusive, as local decisions can and often do impose additional restrictions on use, maintenance and exterior impacts.

## **Appendix D: Items to consider when assessing the comparability of a sale**

Remember, CUFFA contains a non-exclusive list of value adjustments at 11 USC Section 6205(b)(3). However, these are common appraisal concerns. The following expands upon the type of things you might want to point out to your appraiser.

One technical pointer: it is the value of the comparable sale that gets adjusted, not the value of the typical lot. Although this may be a distinction without a difference, as it all flows down to the appraised value of the typical literature, appraisers like to see the language used correctly.

This list is carried forward from the previous NFH booklet on appraisal, entitled Elements of Utility, To be used when appraising real property, by Chresten M. Knudsen, Permit Holder San Bernardino National Forest. Remember, these are considerations to keep in mind when looking at the comparable sale lot. Additions and clarifications made for this publication are in italics.

1. Intended and present use
2. Zoning
  - A. General Plan
  - B. Local codes
  - C. Building codes
  - D. Parking
3. Restrictions
  - A. Height limits
  - B. Ground coverage
  - C. Set backs
4. Suitability for present of intended use.
5. Size
  - A. Large enough
  - B. Too large
  - C. Excess property, excess taxes, maintenance costs
  - D. Too small, cramped facilities, cannot build all desired
6. Shape
  - A. Easily accommodates intended or present constructions
  - B. Awkward shape created awkward layout or facilities
  - C. On-site parking sufficient, good or difficult to maneuver
7. Topographical considerations
8. Availability of Utilities
  - A. Water
  - B. Power
  - C. Sewer
  - D. Telephone
  - E. TV, conventional on-site antenna, dish, cable
  - F. *Cell phone reception*
9. Access
  - A. From existing public streets(*paved, gravel?*)
  - B. Traffic safety, turns
  - C. Private drive, length, construction, maintenance, conflicts shared with others
10. Amenities
  - A. Homeowners or commercial association
  - B. Facilities provided, pool, tennis courts, *dock*
  - C. Landscaping
  - D. Streetscaping

11. View
  - A. For commercial, can traffic easily see & find
  - B. For residential, view out, panoramic, closed
  - C. Tree coverage, restricts, blocks undesirable
12. Neighborhood situation
  - A. Compatibility
  - B. Crime
12. Environmental considerations
  - A. Odors, noise
  - B. Tree coverage
  - C. Creates problems for construction
  - D. Adjacent uses, present, future
  - E. High or low bank
14. Transportation
  - A. Availability of public
  - B. Difficulty of length of drive from work place, shopping, services
15. Public facilities
  - A. Shopping
  - B. Schools
  - C. Services
  - D. Medical, including paramedic
  - E. Government
  - F. Law enforcement
16. Fire protection
  - A. Response time
  - B. Equipment
17. Insurance considerations
  - A. High risk area
18. Property taxes, appropriate for use, loaded
  - A. Mello Roose (*tax for specific items paid for with regular tax bill*)
  - B. Special district
  - C. Homeowners fees, commercial district fees
19. Specifics for islands
  - A. Shoreline or upland
  - B. Bank conditions
  - C. Ferry service
  - D. View
  - E. Tree coverage restricts view, too much shade, no open space
  - F. Building requirements
  - G. Structural design considerations: heavy winds, rocky site
  - H. Shoreline building setback & other considerations
  - I. Dock, existing, can or cannot build

Obviously, some of the above do not apply to a cabin lot, as our use is not commercial. But as to the location of a lot, how difficult it is to build on due to slope or soil type? Is it water front, water influenced, water view? Utilities will be well covered by the Forest Service's Inventory of Improvements, but if you have a pit toilet in the only possible location on the lot due to boulders, this is relevant. Are you across a lake from the nearest location of heavy equipment so that any construction, or septic/ outhouse pumping, are affected?

Finally, be sure to tell the appraiser about the limits on the use that a special use permit includes. Give your appraiser the relevant sections of the permit and the rules, and point out the difference in the market place between a special use permit cabin and a fee simple second home cabin. You will find such a difference in the marketplace. Appraisers do understand those differences.

**Appendix E: Cabin Coalition 2: Updated Statement of Appraisal Problems (used in the March, 2009 visit to Congressional offices in Washington DC)**

**CABIN COALITION 2: SUMMARY OF THE ISSUE**

**March 2009**

The Forest Service rules<sup>1</sup> and the Cabin User Fee Fairness Act<sup>2</sup> (CUFFA) direct the Agency to manage the Recreation Residence Program so as to preserve its viability and fulfill its objectives. Ignoring this mandate, appraisals performed under the Agency’s CUFFA direction have displayed a wide misunderstanding of the Recreation Residence Program, resulting in fees that may ultimately destroy it. These unfairly high fees are resulting in the inability of many cabin owners to pay them, or even to sell the cabins in some cases. All of this may ultimately lead to the demise of the program.

The following chart shows examples of our concern. The new fees will be phased in over 3 years beginning in 2010.

<b>Cabin Tract</b>	<b>2008 Fee</b>	<b>New Fee</b>	<b>\$ Difference</b>	<b>% Increase</b>
Pettiford Creek Bay, NC	\$1050	\$8750	\$7700	733%
Little Colorado, AZ	\$1677	\$10,000	\$8323	496%
Parksville, TN	\$1625	\$12,000	\$10,375	638%
Priest Lake, ID	\$726 - \$6130	\$1100 - \$16,700	\$374 - \$10,570	52% – 172%
Turpin Meadows, WY (no view)	\$3575	\$13,750	\$10,175	285%
Turpin Meadows, WY (view)	\$4900	\$21,750	\$16,850	344%
Black Canyon, WY	\$3690	\$27,250	\$23,560	638%
Lake of the Woods, OR	\$912 - \$2130	\$2000 - \$6750	\$1088 - \$4630	119% - 231%
Rocky Point, OR	\$1704 - \$2130	\$6150 - \$6600	\$4446 - \$4470	261% - 210%

All attempts to solve various aspects of this problem administratively with the Forest Service have been resisted evidencing, a pattern of disrespect not in the spirit of partnership. The Forest Service has characterized cabin owners as just complainers not wanting to pay higher fees reflective of the market. We, however, are not complaining of high fees but unfairly high fees determined by a flawed methodology. An appraisal methodology that starts from a fee simple value of the land underlying the cabins and then tries to adjust from there to determine a value for our rights and privileges as cabin owners on permitted lands is a very complex process, to say the least.

These egregious fees have resulted in second appraisals being completed and paid for by cabin owners in many areas. In many circumstances, these second appraisals have resulted in appraisal values considerably less than the Forest Service contracted appraisals and substantially reduce the resulting fees clearly demonstrating the inconsistencies and subjective nature of this process.

Historically, the amount of the cabin lot fee was set forth in the Forest Service Rules. Flat fees were adjusted to consider the unique aspects of each lot.<sup>3</sup> In the late 1960’s, the Forest Service revised this procedure. It is likely that because the Recreation Residence Program was managed by the lands division, it was determined that the fee would be based on the fair market value of the underlying land, multiplied by 5%. The selection of the amount of the multiplier, at 5%, has been the source of controversy since its inception and it has never been resolved. Freedom of Information Act requests of the Forest Service have failed to establish any rigorous effort to determine what multiplier amount should be appropriate for recreation residence use. No consideration appears to have been given to the lack of risk to the federal government that permit fees afford, nor to the limited term of the permit or other material issues affecting permittees relative to the private market.

The appraisals performed pursuant to these rules and appraisals performed in the preceding two cycles, were subject to numerous appeals. Ultimately, the failure of appraisals to value the use actually granted to permittees remains the central issue. Appraisals often radically overstate the value of the authorized use.

<sup>1</sup> FSM 2347.1 and FSM 2721.23h (Cooperation and Issue Resolution) (emphasizing need for the Forest Service to work with recreation residence permit holders to resolve conflicts and other issues).

<sup>2</sup> 16 U.S.C. 6202. xviii

<sup>3</sup> See e.g. Summer Homes in the National Forests of Oregon and Washington, USDS Forest Service, 1932, p.8, “fee charged ...between \$10 and \$25 per year”.

Recreation residence special use permits contain elements that distinguish the permit holder's rights from those of a lessee of land, as well as those of a fee simple owner of land from whence the comparable sale properties are chosen. A separate detailed listing of those restrictions accompanies this document. The list of restrictions is not exhaustive, but summarizes why someone looking at a permittee's cabin might not understand how all the permit restrictions affect the value of the authorized use.

When CUFFA was first drafted, it was intended that the permit restrictions, not considered in the appraisals performed before its signing in October of 2000, would henceforth be included in the appraisal process. Subsequently, the Forest Service's instructions to contract appraisers and its continued stance are one of insistence that all permit restrictions are accounted for in the application of the 5% multiplier, as it did before CUFFA was drafted. The Forest Service's contention is that they are following the law.

However, we contend that CUFFA is at best ambiguous on the issue of use restrictions being considered when conducting appraisals. The result of the ambiguity in the law provides for the Forest Service's interpretation of CUFFA and the overstating of land values and the resultant unfair fees. Our efforts to work with the Forest Service to come to an alternative administrative solution have been unsuccessful. CUFFA, due to its apparent ambiguity, is legislation that needs Congressional correction.

The procedure of setting a fee that is fair, both to the general public and the cabin owners for the use of the Forest Service lots, is the subject of much debate. Finding a method to determine the proper amount of a permit fee for this use is a difficult matter. The fee methodology needs to be based on the value of this unique type of authorized use. This is often confused with the market value of the lot.<sup>4</sup> There is a real difference and the failure to recognize this is at the core of the dispute over appropriate fees.

Alternative methods have been used by the Forest Service in valuing other uses. Linear rights-of-way for commercial permits and organizational camps use a fee determination procedure that avoids the considerable expense of appraisals and their appeals and establishes a relatively stable fee for the use of the land and consistent revenue to the federal government. (Precedence has been set for non-appraisal fee methodologies when looking at land use activities.)

The appraisal method of valuation has been applied since the late 60's to the cabin program with unsatisfactory results. What has become clear is the failure to address the permit limitations and restrictions within the appraisal process results in unfairly high fees in many areas of the country. The Cabin Coalition 2 is currently exploring whether an appraisal method can be established that either values or applies a percentage adjustment from fee simple value for all the permit restrictions before the multiplier is applied to arrive at a fair annual permit fee. At issue is the fact that there are no comparable land sales with such restrictions, and the level of appraisal expertise is inadequate to recognize those restrictions, so outside the norm of the ordinary appraisal process.

An additional option suggests also reducing the multiplier in acknowledgement of how difficult it is to value restrictions inside the appraisal process yet recognize the effect the severe use restrictions have on the value of the lot and therefore the permit fee. Further, even when those restrictions are recognized in the appraisal process, the multiplier used now is inadequate to recognize the lower level of investment risk to the Forest Service as compared with other "landlords".

An alternative non-appraisal method is also being considered and explored. This method establishes an annual base fee, indexed annually thereafter, combined with a settlement fee paid to the government at time of sale of a cabin. The annual base fee could reflect the income needs of the Forest Service and the affordability needs of the cabin owners on an annual basis. At the time of a cabin sale, when market price is determined objectively, a settlement fee based on a percentage of the sale price would be collected. This fee would recognize the location value of the cabin site but also recognize the cabin improvements' contribution to the land value and the investment risk borne by the cabin owner.

Any fee methodology going forward must provide for the long term viability of the Recreation Residence Program that will continue the valuable forest stewardship of generations of cabin owner families, friends and guests. It needs to recognize and value the use that is granted and the partnership relationship that the Forest Service directives affirm exists between cabin owners and the USDA Forest Service. A fee process must adhere to the following principles:

- Be fair to cabin owners and the general public.

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<sup>4</sup> See e.g. GAO report, U.S. Forest Service, Fees for Recreation Special-Use Permits Do Not Reflect Fair Market Value, December 1996.

- Maintain the program for the average American family, those on fixed incomes, the disabled and the generations to come.
- Recognize the value the cabin brings to the land and the land to the cabin.
- Recognize the substantial investment risk of the cabin owner.
- Recognize that protecting the marketability of the cabin protects both the cabin owner's investment and the government revenue.
- Introduce certainty to the process and long-term interest in the program by establishing value to both parties for its continued existence.
- Recognize that the highest and best use of the land is the Recreation Residence Program.

The development of a fee method that values the use actually granted to permittees as a solution to this issue would certainly benefit from the cooperation of the Forest Service. However, our efforts to work with the Forest Service to resolve the fee issue administratively have been unsuccessful. Clearly, any viable solution requires the cooperation of Congress in amending or replacing CUFFA. While the Forest Service cannot lobby for change, it can at least recognize the need for change and admit that need upon Congressional inquiry.

See the National Forest Homeowners' website at [nationalforesthomeowners.org](http://nationalforesthomeowners.org) for the language of HR 4888 [the Cabin Fee Act]. It sets forth a flat fee system, and a transaction fee upon transfer and issuance of a new permit.