

NATIONAL FOREST HOMEOWNERS

By Facsimile Transmission (202) 205-1604
August 6, 2003

Forest Service, USDA
Attn: Director of Lands
Mail Stop 1104
Washington D.C. 20250-1104

RE: CUFFA Proposed Rule and Directives

Dear Mr. Craven:

National Forest Homeowners (NFH) is the only national organization devoted solely to the representation of recreation residence permittees on National Forest lands across the U.S. In that role we are responding to the Forest Service's proposed changes to its Rules, Regulations and Guidelines to implement the Cabin User Fee Fairness Act of 2000 (CUFFA).

Due to the many omissions, errors, and distortions of both CUFFA, and other Federal law, in these changes in Forest Service special uses regulations and agency directives, we call on you to withdraw the proposed rule, regulations and directives so that they may be completely redone.

The top 18 areas that need to be completely rethought and rewritten are:

1. The Background Discussion is inaccurate;
2. The definition of "lot" improperly enlarges the appraisal subject;
3. Improper directives on Third Party Improvements;
4. Dependence on Uniform Standards for Federal Land Acquisition;
5. Failure to move to the Agricultural County Land Price Index to adjust fees;
6. The suggestion that "other sound business management principals" can substitute for appraisal;
7. Inconsistent definitions throughout;
8. Improper limitations on Peer Reviews;
9. Unnecessary requirements for requests for Second Appraisal or Peer Review;
10. Improper use of the word "rental";
11. Improper limitation on Caretaker Cabins;
12. Improper adjustments to Typical Lots;
13. Resulting improper language in the Guidelines to Appraisers;
14. Improper Recapture of Foregone Fees;
15. Error in the calculation of fees in the chart;

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16. Improper retroactivity provisions;
17. Improper use of the Appraisal Foundation;
18. The many areas of redundancy; and
19. Lack of Coherent Drafting.

In addition to these many substantive problems in the proposed Rules, Regulations and Guidelines, we believe that the use of an untested Internet-based comment procedure with no alternate email comment address frustrated many individuals who attempted to submit comments and has resulted in substantially fewer comments than would have been received under typical procedures. Based on the many phone calls we received from individuals unable to navigate the Forest Service's CUFFA Comment Website, we believe that the comments that were received by the Forest Service represent only a portion of the population that desired to submit comments.

Concerns With The Background Discussion

As you know, members and staff of NFH were involved with the creation of CUFFA and the drafting of its provisions. NFH testified in Congress in support of its passage and to document the need for this legislation. The Cabin Coalition that pushed for CUFFA as a solution to appraisal errors believed those errors were the result of the manner in which the Forest Service was directing the appraisers. Like its Coalition partners, NFH had a specific understanding of what the regulations might look like to implement CUFFA. The proposed Rules, Regulations and Guidelines do not seem to us to be a good faith attempt to implement that law.

The first sign of the problem appears in the Background discussion of CUFFA itself. There is no discussion of the scope and nature of the problem CUFFA was intended to address. Instead the Background discussion continues to promulgate the position of the Forest Service, proved false by the Coalition, that inflation and the failure of the IPD index to keep up were the sole reasons appraisal results were high. The Coalition proved this position to be false in our testimony to Congress. CUFFA itself shows Congress agreed with the Cabin Coalition.

CUFFA was written and approved by Congress to take the bias out of the appraisal process that flowed from instructions from Washington and resulted in unfairly inflated appraisal results and, thus, sometimes exorbitant annual fees.

In paragraph 5 of the Background information, commencing of page 25748 of the Federal Register, there is a representation that this last appraisal cycle was the first time that any appraisals were made of cabin lots. It also states that the appraisals made as a result of the 1988/1994 Policy (Policy) reflected market value increases. In actual fact, before the Policy was final in 1994, fees for cabin owners were set by appraisal. A fee based upon appraisals of the lots, a method adopted in the 1980's over the objections of the cabin owners, was an attempt to back into a fair annual special use fee. During that first appraisal cycle there were similar problems in obtaining appraisals

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that accurately reflected the subject of the appraisal. The appraisals on the Eldorado National Forest, for instance, had to be entirely redone with a second appraiser. The difficulty of obtaining meaningful and accurate appraisals, then, is not a new one.

To summarize, the Background discussion needs to specifically include the following critical information:

- 1) reference the laws that the Forest Service has contended require setting fees based upon the fair market value of the use;
- 2) the fact that a percentage of the lot's appraised value, the lot the Forest Service actually permits to the cabin owner, is intended to result in a fee that captures fair market value;
- 3) the fact that instructing appraisers as to the procedures to use to achieve an accurate reflection of the local market has proved difficult; and
- 4) the fact that Congress' intent with CUFFA was to provide the Forest Service with specific direction on how to conduct appraisals that lead to fees based upon fair market value.

Improper Enlargement of Appraisal Subject With An Inaccurate Definition of "Lot"

Before CUFFA was passed by Congress, the Cabin Coalition tried to work with the Forest Service to correct what they saw as the major source of the errors in many appraisals, namely the instructions from the Forest Service to the appraisers. The Coalition members and others met in Sacramento with Randy Karstaedt of the Forest Service's Washington D.C. Lands Staff, Paul Tittman, since retired Chief Appraiser, and Kim Brower, Region 5 Regional Appraiser, in an attempt to resolve this issue.

At that time, the Forest Service brought a new set of regulations. In these they proposed to "fix" what the Coalition had pointed out was a significant error: appraisers were being instructed to appraise non-lake front lots as lake front if there was only a public access strip between the lot and the lake.

This was clearly in violation of the Policy language, which instructed the appraisers to only appraise the lot. The solution from the Forest Service was a new set of regulations to redefine the subject of the appraisal, so that the appraiser was told to appraise the "site", not the "lot."

The Coalition believed then, as it does now, that this was an improper expansion of the appraisal subject in an effort to increase fees. We clearly communicated this to the Forest Service at that meeting. CUFFA was specifically drafted, in its definitions, to prevent any further such attempt.

This is what makes the proposed new Regulation, Part 251, Section 251.51 Definitions, so very objectionable. It defines the lot as including off-lot uses. This, once again, is an impermissible attempt to enlarge the subject of the appraisal. It violates the provision of CUFFA, Section 604(9) that defines lot as the "parcel" in a specific attempt to prevent

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the incorrect definition of a "lot" as a "site." The new Regulation has to have been promulgated with the specific knowledge that the Coalition members would see it as a violation of the specific definitions of CUFFA. The fact that this erroneous definition is proposed, and that it is then infused throughout all the directives and guidelines to appraisers, is the reason that NFH reluctantly must contend that its promulgation cannot possibly have been in good faith.

The "Definitions" set forth at Section 251.51 of the Regulation should be deleted in full. The directives and the guidelines must be cleansed of the language that follows from this erroneous definition. If this does not occur, the proposed rule and directives are clearly in conflict with the law established by CUFFA.

It must be remembered that the purpose of the appraisal directives is to result in a fee that is fair for this specific recreation use and that supports CUFFA's express intent that the fees not become unaffordable for the average Americans who own these cabins. One example of the problems that will arise if this regulation is adopted with this improper definition has to do with "access to water." Under this definition a lot with a well or water hookup supplied by the Forest Service would be viewed as having the same value as a lot with a permittee installed, and Forest Service approved, pipe running to a lake or river well outside the boundaries of the lot.

The same kind of problem will occur with access roads and sewers. As to off-lot trails or roads for that matter, where does the appraiser stop? Cabin owners, like the general public, have access to every trail on the National Forest in which the lot lies, and to all the roads which the public uses. CUFFA already provides a mechanism to include in the value of the lot the amenities or improvements provided by the Forest Service. There is no basis for adding to that value those items again and again.

On the subject of retaining walls on the lot, the Forest Service often requires the cabin owner to provide and maintain such walls to prevent erosion. This is one of the benefits that cabin owners provide to the Forest Service. Cabin owner tracts often help the Forest Service with its maintenance duties, requiring, for example, the cabin owners to remove hazard trees that are off lot. Requiring this help, and then charging the cabin owner a fee for it, is unacceptable and unsupported by the law.

Boat docks are another, if more subtle, issue. In some locations the Forest Service has previously attempted to extract a fee from the cabin owner only to discover that the dock is on navigable waters, under the jurisdiction of the states. The proposed rule attempts to collect a fee that the Forest Service may not otherwise be allowed to levy.

Some Forests have cabin tracts on lakes that are not under federal government ownership, and the owners of those lakes already charge their own fees and impose their own regulations. Under CUFFA's provisions if a dock is publicly provided, then the appraiser will include this in the appraised value.

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It is also true under the provisions of CUFFA if a lot has access to a lake, then the appraiser will find appropriate comparable land that already takes the access to a lake into consideration in the value, or the appraiser will make appropriate adjustment to the typical lot to consider that access to a lake.

Under CUFFA, the permittee's fee will already includes what the Forest Service provides, and it is only that which is appropriate. The proposed regulations would require the appraiser to call all the lots in a lake tract as water front, because they all had access to a public dock or access to a dock they built with specific Forest Service permission. This is not consistent with either the prior regulations or with CUFFA.

Another problem with this expansion of the definition of a "lot" has surfaced on the Eldorado National Forest, the first Forest to undergo a consistency review in the determination whether permits will be issued for a new term. All the authorized uses are being added to the face of the permit as a condition to a new permit. In the past, there was very little or no language on the face of the permit showing improvements other than the construction and use of a cabin. If, by putting those authorized improvements on the face of the permit, an appraiser is led to believe they are essentially "on lot," there could be unintended consequences of Forest Service regulations and the cabin owner's fees.

The Coalition reviewed many appraisals from across the country when it was helping Congress draft CUFFA. Its members know that the appraisers already have enough problems appraising a lot "in its natural and native state", with no cabin owner provided improvements considered. This is obviously a hypothetical condition. Appraisers also have to take into account all the limitations that a recreation residence permit implies to back into a fee that is appropriate.

The inclusion of off-lot items allows the Forest Service to do what the Coalition pointed out was unacceptable in the Sacramento meeting: appraising "lots" as "sites" to inappropriately maximize the appraisal value and the resulting fee.

The prior Policy did not allow this. CUFFA does not allow this. The Regulation must go. Anyplace in the proposed directives that this concept appears must go. 6.9 Exhibit 6 paragraph 2 on page 25763, the Technical Specifications given to the appraisers, must go. There is no room for negotiation in this matter. This is an improper enlargement of the appraisal subject, the language of CUFFA must be observed, and the carefully drafted language intended to allow appraisers to understand what they are being asked to appraise must not be ignored.

Improper Directives on Third Party Improvements

Another provision in the directives that is of particular concern is in the area of third party improvements. Section 606(b)(4)(A) of CUFFA provides that the appraisal of the lot is not to include the improvements which the cabin owner "provided" and will include

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the improvements which the Forest Service provided. This is obviously simple and straightforward. It is the issue of improvements provided by third parties that was the subject of particularly heated discussion even before the passage of CUFFA.

The final version of CUFFA included the requirement that the improvements provided by a third party are not to be included in the value of the lot unless the Forest Service can “determine” that the capital costs have not been, or are not being paid for, by the cabin owner [Sec. 606.(b)(4)(A)(iii)]. The burden is on the Forest Service to make this determination.

In Section 606(a)(1), CUFFA requires that the Forest Service complete an inventory of all improvements and requires that the Forest Service must “presume” that the cabin owner provided the improvement unless the Forest Service “produces evidence” that it or a third party paid for the capital costs. Thus, CUFFA requires the Forest Service to find actual evidence of who paid in order to add the third party improvement in the value of the lot.

Section 33.42a-(2) of the proposed directives does not comply with CUFFA. It attempts to determine by definition that certain improvements are not paid for by cabin owners. This is not the same as providing evidence that this is true. Stating that hook-up fees or tap fees do not constitute payment of capital costs is not supported by the evidence required in CUFFA. None of the provisions of 33.42(b) are supported by evidence. CUFFA put the burden on the Forest Service to prove who paid for improvements. No regulation should shift that burden back to the cabin owner or eliminate the ability to make the determination on a case by case basis. This section, at a minimum, should be re-written to eliminate this defect.

We also direct your attention to comments submitted by Lake Wenatchee Summer Home Association (and incorporated herein by reference) on this issue and the subject of roads. They provide a good further discussion of this issue, especially in their discussion of the way in which ratepayers in Western States may actually pay for improvements.

Dependence on Uniform Standards for Federal Land Acquisition

In Section 606.(a)(7) CUFFA clearly states that first and foremost “...the appraiser perform the appraisal in compliance with—

- (A) the most current edition of the Uniform Standards of Professional Appraisal Practice in effect on the date of the appraisal;
- (B) the most current edition of the Uniform Appraisal Standards for Federal Land Acquisitions....; and
- (C) the specific appraisal guidelines developed in accordance with this title.”

This language clearly establishes precedence in the eyes of Congress.

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Yet in 6.0 Exhibit .06 "Required Specifications for the Appraisal of Recreation Residence Lots" C.2.1 (g) there is the clear statement that USFLA shall "take precedence in any differences among definitions."

This is clearly improper. Not only does Section 606 place the Uniform Standards of Professional Appraisal Practice (USPAP) above USFLA in precedence, but USFLA is for specifically for Federal land acquisition. The Federal Government is not acquiring these lots; it already owns them. Even more critical, the USFLA have not been peer reviewed for compliance with USPAP and are based on the requirements of Federal eminent domain law, which is irrelevant to this appraisal assignment. It also may well be in conflict with both CUFFA and other laws regarding the use of government land.

Consequently this provision in 6.0 Exhibit .06 must be removed immediately.

Failure to Use the Index of Agricultural Land Prices

The Forest Service has publicly contended that the prior index used to make annual adjustments to the fees, the Implicit Price Deflator, Gross Domestic Product (I.P.D.), was not a good one for keeping track of inflation as it related to real property. They also maintained that it was the use of this index that accounted for at least some of the sticker shock in new fees as a result of the latest appraisals.

CUFFA, thus, provided for a new index more directly related to land values in Section 608(b). For the first 10 years after enactment of CUFFA, a new index is to be tried: "changes in agricultural land prices in the appropriate State or county, as reported in the Index of Agricultural Land Prices published by the Department of Agriculture." However, subsection (c) provides that another index may be used "...if the Secretary determines that a different index better reflects change in the value of a lot over time." Such a determination has not been made by the Secretary.

In the Background section this new Index for adjusting fees is mentioned. However the Forest Service says they will continue to use the I.P.D. during "the transition period" pursuant to "February 20, 2003 interim Directive 2709.11-2003-1."

Yet in the amendments to the Forest Service Handbook, 2709.11, 33.13 there is no mention of ever using the Index of Agricultural Land Prices. This either means the Forest Service intends to incur the unnecessary expense of updating their Handbook when the transition is over or they hope to bury the Index of Agricultural Land Prices. Either way this section violates the provisions of CUFFA and must be changed to comply with the law.

"Other Sound Business Management Principles"

Section 251.57 also includes worrisome language. The language "or other sound business management principles" should be eliminated. It invites the Forest Service to

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pick any method of setting a fee it wants, which is clearly a violation of CUFFA, with its specific directives as to how to perform an appropriate appraisal. Inclusion of this language invites mischief and experimentation with the fee-setting process and must be deleted.

Inconsistent Definitions

Throughout the directives and, particularly, throughout the guidelines to appraisers, there are definitions that do not use the same language as that of CUFFA, and that differ even among themselves from place to place. The definitions of CUFFA were carefully written and should be adopted as is in the directives. No variations are warranted.

For example “market value” is a term of art that appraisers understand. The requirement in Section 606(a)(7)(A) that accepted appraisal standards be used makes the inclusion of a specific definition for “Market Value” [FSH 2709.11, 33.05] unnecessary and not called for by CUFFA.

Of even greater concern is the inclusion of language in this same paragraph that the appraiser is to consider “all available economic uses” of the lot. This language clearly deviates from CUFFA and previous appraisal approach that limited the use to the current use. In fact, this language is in conflict with Section C-2.2(b) (3)1 in the Required Specifications For Appraisal Of Recreation Residence Lots which states “The identified highest and best use shall be the authorized use; a lot suitable for use as a recreation residence site. No other potential highest and best use shall be considered or discussed in the appraisal report.” We cannot have appraisals with comparable sales of commercial property, such as a condo, which this definition allows.

Finally, the term “holder” is used throughout the regulations, sometimes as recreation residence holder rather than the correct reference to permit holder. CUFFA defines this as a “cabin owner.” There should be consistency with the law.

Another definitional confusion exists with respect to marketable timber. This is meant to be a deduction from the value of comparable properties, as a cabin owner cannot market timber as can an owner of fee simple real property. The Regulation does not make this clear in Page 25755, Section 33.4(3)(c). This should be clarified by the Regulations as an appraiser may not understand the application of this clause. Further, there should be no variation from CUFFA’s language in this section, as does occur.

Improper Limitation of Peer Reviews

Another significant problem with the directives is the treatment of peer review of appraisals. CUFFA provided for such reviews in Section 614. The language in Paragraph 33.83(1) of the proposed directives seeks to limit the scope and usefulness of a peer review, as does the reference to it in Section 33.8 and 33.81.

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Peer review is intended to allow the peer appraiser to recommend that the appraisal be (1) adjusted to comply with CUFFA, or (2) thrown out as just an incompetent appraisal. For example, if one of the comparable sales used in an appraisal is located in a subdivision, and does not fit the provisions of CUFFA, and the elimination of that particular comparable sale still allows the appraisal to stand after the peers have adjusted the resulting value. Consequently, the expense of a second appraisal, for either the Forest Service or the cabin owners, can be avoided. CUFFA was intended to provide such a result.

The regulations as drafted “confine” the peer review report to determining whether the regulations have been violated or not. Paragraph 33.83 must be changed; as it is proposed it guts the usefulness of the peer review.

Further, there is nothing in CUFFA that precludes the use of both a peer review and a second appraisal. There may well be circumstances in which, after a peer review, the only reasonable solution is to start over with a new appraisal. The directives appear to preclude this in Section 33.8. To the extent that this section can be read this way, it should be rewritten to specifically provide for such a circumstance.

Unnecessary Requirements for Requests for Second Appraisal or Peer Review

Paragraph 33.82 contains a proposed form for cabin owners to sign if they choose to ask for a new appraisal, and Section 33.83 has a similar form for cabin owners who request a peer review. CUFFA does not provide for such forms to be signed by cabin owners as a prerequisite to seeking a new appraisal or peer review. The forms, as written, would serve to frighten cabin owners and discourage them from pursuing their rights under the terms of CUFFA. Those forms should be eliminated.

To the extent that some type of form is requested from cabin owners if they wish to pursue a new appraisal or a peer review, such forms should more carefully track the express language of Section 614(a)(2)(B)(ii). The language of that section of CUFFA is much clearer and easier to understand than the language of the proposed forms included in proposed paragraphs 33.82 and 33.83.

Improper Use of the Word “Rental”

A continuing problem in the drafting of any language with reference to fees charged for recreation residences is the inadvertent use of the word “rental.” The fees are annual special use fees, not rent. Appraisers -- as well as Forest Service employees and staff -- have enough trouble trying to understand the basis of these special use fees. The appraisal of the lots from which a fee is extrapolated is to be carried out as if it were a “fee simple” raw land parcel, not a lease, and not rent of the lot.

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Both property rents and leases carry their own legal meaning that is irrelevant to this process, and the use of either term should be rooted out whenever possible to prevent any confusion. Thus, Section 251.57 should be entitled "User Fees" or "Special Use Fees," not "Rental fees."

Improper Limitation of Caretaker Cabins

2340.05 defines a caretaker cabin with different language than that in CUFFA. This should be corrected. The directive defines such a cabin as only within a tract, but a caretaker cabin may be located outside a tract, for instance on a road on the way to the tract, and perform the same purpose.

Further, there is no need to discriminate against such a cabin. It was previously authorized by the local Forest, when both the members of the cabin tract and the Forest Service thought that the need for oversight by a caretaker was a good idea. Some of the caretakers are retired Forest Service personnel, and provide services that are useful to both cabin owners and the Forest Service such as for securing an area when the first real snows hit, or aiding with search and rescue. If a caretaker cabin has been deemed appropriate up to this point in time, there is no need to add a provision, outside the requirement of CUFFA, for such cabins to be limited to annual permits, and generally frowned upon.

Finally, it is unclear from this publication just what is being changed in the Handbook or Manual about caretaker cabins. The Federal Register discussion should have made this clear. CUFFA only changed the fee to require it "not be greater than the base cabin user fee charged for the authorized use of a similar typical lot in the tract. If annual permits were the only permits previously permitted, then the discussion should have said so.

Improper Adjustments to Typical Lots

Page 25755, Paragraph 33.4.1, second paragraph, provides that "Adjustments may be made for measurable differences among recreation residence lots within a (typical) grouping."

The grouping of typical lots is supposed to result in lots "...which are essentially the same or which have similar economic value characteristics..."[33.41] If there are differences, then another grouping should be chosen pursuant to CUFFA's requirements. The appraiser cannot be given the authority to change the groupings. CUFFA specifically leaves this to the cabin owners and the Forest Service. This last sentence in 33.4.1 violates CUFFA and must be deleted

Resulting Improper Language in the Guidelines to Appraisers

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The Guidelines for Appraisers included as Exhibit 06 has defects resulting from the above-listed problems as well as other problems. Those other problems include:

- C-2.1(e) requires the appraisal to be updated for 2 years. This should be eliminated. The value should be that as of the inspection of the last typical lot, and should not continue to change for 2 years. CUFFA does not provide this.
- C-2.1(g) gives a reference for the appropriate places to find definitions. CUFFA should be included here.
- C-2-2(b)(2)(3)(b) Use of the word “neighborhood” rather than tract should be avoided. It leaves the impression that tracts are subdivisions, and perpetuates errors in the selection of comparables sales that resulted from a prior similar guideline to appraisers. This guideline was specifically intended to be corrected by Section 606(b)(1)(B)(ii) of the Act, which specifically states that a “...typical lot will not usually be equivalent to a legally subdivided lot.”
- C-2-2(b)(2)(4)(a) refers to timber and commercial value for mineral deposits. CUFFA does not allow the Forest Service to have a fee set based upon the value of the timber or the minerals on the lot. The inclusion of these factors is likely to lead to confusion on behalf of the appraiser. Say trees instead of timber, and delete the reference to minerals.
- C-2-2(b)(2)(4)(e) requires the appraiser to cite the sales of the actual cabin on the typical lot. We understand that USPAP requires appraisers to report and analyze any prior transfer of the subject property within the preceding 3 years. However, it is imperative that everyone understands and appreciates that the “sale” only involved the cabin and related improvements. What is being appraised is the lot in its “natural and native state.” Any use of prior, recent sales to estimate lot value is directly contrary to the terms of CUFFA, and will mislead the appraiser. The sale of the cabin under permit is NOT the same as the fair market value to a comparable sale of a typical lot as defined by CUFFA and has no bearing on the appraised value of the undeveloped lot.
- As noted above, there are inconsistent definitions and use of language throughout the Guidelines, and each difference is an invitation to problems in the future. Language should mirror CUFFA, and there should be no repetitions.
- C-2-2(b)(1) Part 1-7, paragraph 3 contains the language that “The adoption of an uninstructed assumption or hypothetical condition that results in other than ‘as is’ market value will invalidate the appraisal.” The inclusion of this statement is also a concern. The requirement that the appraisal be of the lot without any cabin owner improvements is already a “hypothetical condition” under USPAP. This language is unnecessary, in any case, as the appropriate

prohibitions are already part of the appraisal requirements in USPAP. It does nothing other than confuse the appraiser.

Improper Recapture of Foregone Fees

On page Section 25754, Section 33.2 provides for the recapture of foregone fees in the event of a reversed decision to terminate a permit. This is not mandated in CUFFA – only the phase-in recapture and the valuation recapture in the event of the second appraisal resulting in essentially the same fee. As such, this language should be deleted from this proposed draft regulation to implement CUFFA.

Furthermore, the statement that any recapture obligations “*runs with the recreation residence lot*” implies a fee simple ownership obligation that is transferable to a new permittee. This is a peculiar addition. This obligation – if it can be justified in the regulations at all - should apply only to the permittee to whom the obligation relates and should not run with the land. Permittees have only limited possessory rights, not ownership rights where such an “*assessment*” would normally be applied. Cabin owners cannot simultaneously have no land ownership, and be treated as if they do.

Error in Calculation of Fees in Chart

Sec. 33.13 (Annual Adjustment of Recreation Residence Fee) contains a formula, with its approach regarding carryovers that can inadvertently result in an annual increase in excess of 5%. Example 2 provided in the Notice illustrates this. The increase from the 2006 fee to the 2007 fee is over 6.7%.

When the index is greater than 5%, the formula should be more simply stated as follows. “An annual adjustment to the base fee shall be no more than 5 percent in any single year. When the annual change to the index is greater than 5 percent, the annual adjustment to the base fee shall be limited to 5 percent and will continue to increase at the 5 percent annual rate, even when the annual change to the index falls below 5 percent, until the cumulative Fee rate adjustment “catches up” with the cumulative index changes.” For example:

Year	Fee	Index change (& potential fee)	Fee increase
2004	\$700.00	7% (\$749.00)	5%
2005	\$735.00	6% (\$793.94)	5%
2006	\$771.75	3% (\$817.76)	5%
2007	\$810.34	3% (\$842.29)	3.943%

2008 \$842.29

Improper Retroactivity Provisions

Paragraphs 33.82 and 33.83 should make it clear that if a new appraisal or peer review is requested and the resulting base cabin user fee is ninety percent or more of the fee in effect for the lot as determined by an appraisal, the retroactivity of the fee should go to either:

- (1) the date of the request for a new appraisal or peer review; or
- (2) the date on which the new fee would have gone into effect but for the request for a new appraisal or peer review.

CUFFA Section 614(a)(2)(B)(ii) clearly did not intend that the higher fee be retroactive all the way back to the date when the earlier pre-CUFFA appraisal had been made. This is certainly not the purpose of the CUFFA transition provisions, because those provisions clearly delay the implementation of higher fees until after the new regulations go into effect. Cabin owners have no control over the pace at which these regulations have been prepared, proposed and finally promulgated, and should not be penalized by the delay.

Improper Use of the Appraisal Foundation

The Appraisal Foundation testified in Congress in opposition to the adoption of CUFFA. It also has reviewed the proposed rule and directives to ensure that they comply with CUFFA. Many members of that Foundation believe that both of these acts exceed the scope of the Foundation's charter. Nor do they believe the Foundation has any expertise in making legal judgments about guideline.

It does not appear that the Foundation has any written policies or procedures for selecting or performing these studies and no internal review system. It is totally ad hoc. This is of great concern to many members of the Foundation.

Further, there are numerous errors in the Foundation's earlier statements, including the Supplemental Report dated April 18, 2000, furnished to Congress in an attempt to prevent the adoption of CUFFA, in which it described the previous Handbook language as calling for "The valuation is to be of the fee simple interest with significant restrictions and conditions." This was not correct then, and it is not correct now. It was inconsistent with the general specifications attached as Appendix A to the Report. Mistakes continued on page 9 of the report, when it is stated that "The site is described as the specific area in the permit on which the permittee has exclusive use." Cabin owners cannot prevent the general public from using other areas of their lot not occupied by the footprint of their cabin. The Forest Service knows this. Cabin owners know this. The Foundation, apparently, did not.

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There are numerous other errors in this report and, NFH believes, in the proposed Rule and directives which the Appraisal Foundation appears to have approved. If the Appraisal Foundation was so poorly informed, then it is clear how incautious language slipping into the directives can confuse an ordinary appraiser trying to follow them.

Finally, the bias in favor of the Foundation when undergoing peer review in Section 33.83 is inappropriate, given this history. There are other appraisal organizations, and there is no reason for preferring the Foundation over any other.

The Many Areas of Redundancy

Throughout the proposed rules, regulations and guidelines, similar concepts and issues are discussed within different and multiple sections, often with subtle and confusing differences in wording and description. These conflicts and variability will, if not corrected, produce continuing debate and controversy over the application of these appraisal instructions and the resulting appraisals. It is the opinion of our professional appraiser that there are so many problems of this type that the draft regulations should be withdrawn and redone from the beginning.

Lack of Coherent Drafting

The Coalition's expert appraiser is also troubled by the failure to separate specifications for the appraisal and for the report. This leads to far too much complexity and difficulty in comprehension.

Further, Page 25781 refers to page 25755 and to four paragraphs that appear to be missing. This seems to be another example of what appears to be the lack of coherent drafting.

Conclusion

In summation we, the National Forest Homeowners, feel these regulations are seriously flawed. There are basic violations of an Act of Congress, misrepresentations of Congressional intent, improper definitions, errors of fact, misstatements, and improper interpretations in areas left to the Forest Service's reading and understanding of CUFFA.

There are sections of the directives of which NFH approves and thanks the Forest Service for including. One of the most significant is the revisions to Section 2347.1, which now appropriately includes the purposes of CUFFA set forth in its Section 603. We also welcome the directives' inclusion that the Forest Service should work in partnership with cabin owners. We, too, encourage such partnerships whenever possible at the local levels. We hope that our current differences in the manner in which

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fees should be set for this use can be resolved, and that the provisions of CUFFA can be implemented with no further delays.

Please contact me at the numbers shown below or Mary Clarke Ver Hoef, NFH Government Liaison Committee Chair, at 916-648-2130 if we may clarify any of our comments.

Very truly yours,

Roy E. Glauthier
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Representative John T. Doolittle
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The Honorable Mark Rey, Under Secretary for
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