

THE
UPDATED

Cabin Owner's Guide

To

SETTING CABIN FEES

AS REVISED BY C.U.F.F.A.

Version 1.5

(Formerly the Appraisal Guidebook)



NATIONAL FOREST
HOMEOWNERS

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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 set at 5% of the market value of the cabin’s lot. The value is determined through an appraisal process. Appraisals are done every 10 years and, during those ten years, the fee is indexed annually.

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, including the neighborhood type around each of the lots, access, weather, and other normal appraisal adjustments between values are taken into consideration. The Forest Service’s current position, as of this draft, is that no Forest Service permit related rules that affect the cabin lot use can be considered. NFH and a coalition of other cabin owner groups disagree.

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. 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 insure 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.

**THE
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AS REVISED BY C.U.F.F.A.

Version 1.3

(Formerly the Appraisal Guidebook)

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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 and describes some of the problems that led to the passage of the Cabin User Fee Fairness Act of 2000 or “CUFFA.” Chapter 2, Overview of the Current Appraisal System, covers the current rules under CUFFA and explains how some of the described problems were addressed.

Chapter 3, Transition to the CUFFA Rules, is intended to appear only in the first editions of this booklet. It covers the rules that are specific to the transition period from the old rules to the new rules under CUFFA. While at least one choice in this chapter can lead to the application of the new rules in a new appraisal, that choice will be available only for the period from May 3, 2006 through May 2, 2008. After the later date, this section will be moot.

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” 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.

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 type, then the resulting value of the cabin lot is inaccurately high.

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 some 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, a 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 clear that the resolution still had to be based on the value of the lot, and there was no political will 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. 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 must decide what to do about the prior appraisals. The implementation of many of those appraisals was suspended by CUFFA and earlier legislation. Even those whose appraisals were implemented have a choice, but timing may be a consideration here, as is discussed in more detail in Chapter 3, below, which addresses these transition rules in detail.

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?

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 Forest Service has 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, notwithstanding the specific language in CUFFA that states that all typical value influences described in standard appraisal literature are to be considered.

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 insuring 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 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 makes 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, the appraiser looks for locations similar to that of the cabin lot, but may be forced to take what is available, and adjust as appropriate.

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.” This language is one reason we believe the recreation residence cabin’s limitations should be adjusted for in the appraisal.

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 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, reorganized somewhat, is as follows:

- Location. This is a big topic. It includes geography, topography, neighborhood, and could 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.

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.

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.

The Forest Service limits allowable adjustments to 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.

Local and regional rules that limit use should also be considered when they affect market value. 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).

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 and 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. It is this provision that cabin owners believe also supports a contention that CUFFA is intended to provide adjustment for all aspects of a recreation residence special use permit.

The Forest Service currently contends that Section 607 of CUFFA, which states that the 5% multiplier reflects an adjustment to the typical market rate of return due to restrictions imposed by the permit, prohibits many of the adjustments that cabin owners believe are required to result in a fair appraisal., contending that this means that those restrictions are already included in the 5%.

The problem with such an interpretation is that section 607 states that the 5% is applied AFTER the appraisal is performed under the previous section, 606. It is Section 606 that includes all the specific references to adjustments.

Section 607 includes an explanation of why the amount of 5% is used, and not 6% or 7%, listing three characteristics of such a permit, "including"

- (1) the limited term of the authorization;
- (2) the absence of significant property rights normally attached to fee simple ownership; and
- (3) the public right of access to, and use of, any open portion of the lot on which the cabin or other enclosed improvements are not located.

If the characteristics of a permit were all intended to be included in the 5%, then there should be no reference to the previous section or the requirement that the appraisal value the lot with a recreation residence as its highest and best use. Section 607 is only the justification of the 5% amount, not a limit to the adjustments that can be applied.

Remember, all our permits are limited to a maximum number of 20 years. If the Forest Service decides that another use of the land would be better, it can require the removal of our cabins. If it gives sufficient notice, we have to remove all improvements at our expense and restore the land to its original state. As distinguished from a 20 year lease, we cannot

obtain a bank loan with a special use permit and we cannot grant an easement during our tenure. We cannot prohibit the rest of the general public from using any portion of our lot not otherwise occupied by our cabins and outbuildings. How can these limitations not have an effect on the value of the lot? In fact, they do, and appraisers can see this in the difference between the sale prices of recreation residence cabins and fee simple cabins.

As the Forest Service has chosen to interpret CUFFA so as to conduct appraisals in the same exact manner that they did before CUFFA was passed to fix the manner of those appraisals, National Forest Homeowners and a number of other cabin owner groups including American Land Rights Association, Washington State Homeowners Association, Oregon Forest Homeowners Association, California Forest Homeowners, Sawtooth Forest Cabin Owners Association (Idaho), Priest Lake Association (Idaho), Lake Wenatchee Summer Home Association (Washington), and with the help of individual members in Wyoming, Arizona, Florida have joined together in a group now known as the Cabin Coalition². Included in this version of this booklet is Appendix D, a statement from C2 about the necessity to include all permit restrictions in the appraisal process. This group is working on a solution to this problem, and we will keep you informed of our progress.

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. Cabinowners 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%. With careful use of the tools provided in CUFFA, we all hope to see fees that we can live with for many years ahead.

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. 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

Explaining the Transition Period

The Cabin User Fee Fairness Act (CUFFA) was drafted and became law to remedy problems encountered in the last appraisal cycle. Thus, it suspended implementation of those appraisals until its rules and regulations became effective. Now that those regulations are in effect, cabin owners must make a decision regarding that last appraisal. This section addresses and explains the choices available to cabin owners regarding their last appraisal done between 1995 and 2000.

The effective date of the CUFFA rules and regulations, May 3, 2006, began a two-year “Transition Period,” through May 2, 2008, during which those cabin owners with appraisals completed on or after September 30, 1995, are supposed to select one of several options for the implementation or reconsideration of those appraisal results. Selection is either by action or inaction. If you fail to do anything during those two years, the appraisal stands.

Transition Period Choices

As explained above, the Forest Service is expecting each typical lot group to determine how its last appraisal will be implemented. This section identifies and discusses the options available to the cabin owners. To properly select among these options, it will be useful for you to determine the date of your last appraisal report and when your new appraisal will be due under the new 10-year cycle (See “A Matter of Timing” below).

It should be noted that there were some appraisals in the last cycle that were completed and their resulting fees implemented prior to the passage of CUFFA in 2000. CUFFA’s suspension of appraisal implementation did not affect these fees, since they had already been implemented. Even these cabin owners, however, have the opportunity to change their appraisals. As we will see below, however, the timing of a new appraisal may make this irrelevant.

Option 1. Request a New Appraisal. The first option is to request that a new appraisal be conducted pursuant to the new CUFFA procedures. Note that a new appraisal would use the same date of sale value as in the preceding appraisal, not current values. Here are some points to consider:

- This decision must be made by majority rule of the permittees in the typical lot group;
- The typical lot group will be responsible for only one half the cost of the new appraisal, and the Forest Service pays the other half;
- If the previous appraisal would have resulted in a fee increase of more than \$3,000 from the fee assessed on October 1, 1996, and if the new appraisal does not lower the fee more than 10%, then all the permittees covered by the typical lot will have to pay this new fee retroactively to the date that the old appraisal was conducted (for obvious reasons, we’re calling this the “punishing provision,” but this is intended to keep down the number of frivolous request); and
- There is a form for electing this option that must be signed by a majority of the permit holders within the typical lot group which formally accepts these provisions.

Obviously, this choice should be made carefully due to the possible downside risks of a second appraisal resulting in not enough change to the first. You should first determine if there are comparable sales that should not have been used under CUFFA rules. Are there adjustments that should have been made but were not? Do you have data on actual sales that would have been more comparable? Is the result enough to change the fee more than 10%? Note that the punishing provision applies only if the fee was going up by more than \$3,000. For those whose fees did not escalate this much, who do not mind paying half of a second appraisal, and whose old appraisal has objectionable issues, this may be a good choice. But this is a good choice only if the cost of the second appraisal does not exceed the fee difference for the number of years under which the old appraisal would otherwise be effective. (See “A Matter of Timing” below.)

If a second appraisal is contemplated, the typical lot group’s participation is virtually the same as for a new appraisal. The suggestions for this process are discussed in Chapter 4.

Option 2: Request A Peer Review. Here, another appraiser or appraisers will evaluate the prior appraisal and determine what might be inconsistent with the new approach under CUFFA. Here are some considerations regarding this option:

- Again, this decision must be made by majority rule of the permittees in the typical lot group;
- The typical lot group will be responsible for one half the cost of the peer review;
- The cost of the peer review will be determined, at which time the decision of whether to go forward or not can be made; and
- The punishing provisions apply as described under Option 1 with the same dollar amounts and dates.

If the finding of the peer review is that the appraisal was not conducted in a manner consistent with the new CUFFA regulations, policies, and appraisal guidelines, the Forest Service must either establish a new base fee to reflect consistency with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA, or conduct a new appraisal – with shared expense - in accordance with the provisions of CUFFA if requested by a majority of the affected holders.

A difficulty we see with this option is that the rules do not allow the peer review to specify a dollar adjustment and do not explain how the Forest Service deciding officer is to pick a new base fee. It is unlikely that any Forest Service officer will want to pick a fee without something to support a dollar decision. Thus, NFH does not recommend this choice except under specific circumstances where a revision to an appraisal results in a clear change that a particular Forest Service officer is inclined to make.

Option 3: Request that the Prior Appraisal be Implemented. Approximately 20% of the typical lots appraised before CUFFA was signed received an appraisal with a value less than the value of a prior appraisal. Thus, those fees were set to go down. CUFFA prevented the implementation of those fees going down as well as of those going up. The typical lot groups whose fees would go down should request that this change be implemented immediately.

Fortunately, the Forest Service has agreed that their delay in the promulgation of the CUFFA rules should not cause these permittees to pay excess fees. Thus, new rules became effective September 19, 2006 (referred to as the Clarification Rules and available on the NFH website (nationalforesthomeowners.org) and give these cabin owners credit for the

overpayment of their fees for the years 2001 through 2006. In order for this to happen, however, these cabin owners must give the Forest Service notice of their choice to exercise this option. This credit would also apply to those who request a second appraisal or peer review and whose resulting fee is lowered.

Be sure that your fees were actually set to go down before requesting that the prior appraisal be implemented. At least one mistake has been made when the fee actually went up, potentially allowing the collection of extra higher fees earlier than they would have been otherwise collected.

Options 1, 2 and 3 are the formal choices specified in the CUFFA rules and regulations. NFH feels that there are two additional options that should be considered.

Option 4: Request the Correction of Errors. Some pre-CUFFA appraisals contained errors of fact. Since the review and appeal processes were stopped by CUFFA and by earlier legislation, efforts to fix such errors were suspended. Although this choice was not specifically enumerated as a choice under CUFFA, it provides a common sense solution to problems that would have been corrected except for the timing of CUFFA's passage.

An example might be an incorrect adjustment made to a typical lot's value based on the erroneous assertion that there is accessibility by road in the winter. If the adjustment upward in the value of a cabin lot for access in winter that does not actually exist, then the value of the lot should go down. This was a factual error in the appraisal, showing winter access that does not exist, not just an appraiser's error under CUFFA.

Due to the fact that correction of such an error would only be requested if the result would be a lowered fee, the Forest Service has agreed that the affected permittees may contact their Regional Review Appraiser and ask for a correction without obtaining the signatures of a majority of the typical lot group. That Review Appraiser may have to contact the original contract appraiser to correct the error, but the corrections may make a difference in value that results in a significant change to the resulting fee. This solution does not require permittees to pay for a new appraisal and has no punishing consequence. However, it should be used only when there is a factual error, not a procedural error of a failure to follow CUFFA's rules.

In the last year, however, NFH knows of only two cabins tracts that have requested such a review. In both cases evidence was provided that the period of time that the tract was said to be accessible and used to determine that the lot valuations were erroneous. In both cases, notwithstanding the fact that the access period is one of the most important factors in determining value, the Forest Service Review Appraiser stuck by the originally value. For that reason, NFH now has real doubts that this commonsense solution to fix factual errors is being seriously considered by the Forest Service. Instead, all due deference is being given to the appraiser, and without another appraiser giving a differing opinion, the opinion of cabin owners appears to carry little weight.

Option 5: Take No Action During the Transition Period. If no formal choice is made within the Transition Period by a typical lot group, then the Forest Service will implement the prior appraisal with the next fee statement following May 2, 2008. This means that a suspended appraisal would, at the earliest, be reflected in the fee charged at the beginning of **2009**. This assumes, however, that there is no new 10-year cycle appraisal done first.

A Matter of Timing

When CUFFA was passed and signed into law in 2000, it was expected that its implementing rules and regulations would follow shortly and that all the issues relating to the 1995-2000 appraisals would be ironed out before the next round of appraisals. In fact, the regulations were not final until 2006.

The regulations became effective on May 3, 2006, so the Transition Period will run through May 2, 2008, and, as noted above, implementation of fees based on the last appraisals could be put off until the 2009 fee invoices. At the same time, new appraisals began in some locations in 2006 in accordance with the new 10-year cycle, and those appraisals could result in new valuations before 2009.

This obviously complicates the decision of whether to request a second appraisal or peer review of an old appraisal. Some tracts with old appraisals that otherwise clearly need a second look under the CUFFA approach may not need to address this issue because they will get a new appraisal starting in 2007 which will supersede the old appraisal. In those cases, it may be a waste of time and money to argue about an appraisal done under an old system since the resulting fee will never be charged. In some cases, higher objectionable fees might only be charged for one or two years until the next appraisal is finalized. For those who will have annual fees based on the old appraisal only for a year or so before a new appraisal comes into play, the amount of the new fee will likely affect their decision of whether to ask for second appraisal or peer review.

We suggest you discuss this with your local Forest Service authority, in conjunction with the Review Appraiser, to work out the dates and fee calculations in order to make an educated decision. This may come down to weighing the cost of one half of the new appraisal against the one or two years of a fee that you think is higher than it should be.

Calculating & Phasing-In New Fees

The Clarification Rules provide detailed examples for how to calculate the new fees, both those being lowered and those increasing. Remember that the fees to be charged in 2009 pursuant to appraisals that have been on hold due to CUFFA will include an annual index (similar to adjusting for inflation) for each year that fees have been on hold. Thus, your fee in 2009 will probably be higher than the amount that would otherwise have been charged in 2000 if CUFFA had not held off billing of your fees under that appraisal.

Finally, there is a specified phase-in period of three years for fees that will go up more than 100% over the most recent annual fee. The Clarification Rules also contain an example of how to calculate this phase-in.

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 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 2010. 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. These steps, by the way, are also applicable to those seeking a second appraisal during the CUFFA transition period discussed in Chapter 3.

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 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 accept the appraisal or 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.

If the value is higher than you think appropriate, you will want to go 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 ask for a second appraisal. A request must be made in writing to the Forest Service within 60 days after receipt of the notice of appraisal acceptance. 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.

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 as in the earlier appraisal. The cabin owner picks the appraiser from among a listing of appraisers with the same qualifications as the original appraiser, (we have heard of cabin owners asking for their appraiser to be considered, if that appraiser has the correct qualifications) and the Review Appraiser must approve this selection in advance. You may 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 second appraisal is accepted by the Forest Service after approval by the Review Appraiser, 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. 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%.

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 (1-800-669-9971) and by email at 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 cabinowners 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, recalcd 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. UASFLA
 - 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 Typical. Opportunity to meet with appraiser concerning selection of Typical.
 - 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:
 - a. existed prior to cabin first authorized in tract
- 33.5 – Appraisal Specs.; see FSH 5409.12, Sect. 65.3 and 66 ex.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 ½ 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 ½, 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 cabinowners 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 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]. Please note that the restrictions on use and limitations of this includes [list all that apply]. We believe these limitations may have a bearing on the market value of the lot.

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. [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:

Appendix C: 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.

Problems with the Interpretation of the Cabin User Fee Fairness Act

The Recreation Residence Program was established under the Organic Administration Act of 1897. On March 4, 1915 the Occupancy Permits Act authorized long-term permits (up to 30 years) to encourage public use, private investment and the building of cabins on the National Forest.

This was among the earliest recreation programs in the National Forests and, for more than 100 years, has provided a forest experience for multiple generations of entire families, their friends, children, the elderly and the physically handicapped. Ninety years later, this particular form of recreation is regularly stated as a “valid use” of National Forest System lands¹. Sadly, however, today in many National Forests this congressionally accepted “valid use,” is being threatened.

In 1969, in exchange for 20 year permits, the Forest Service set up a system of appraisals to establish lot values and the annual special use fee, set at 5% of that appraised value. The system of appraisal changed little until recently. The 5% has remained constant, reportedly reflecting historical application going back into the late 1800’s. However, we believe it does not reflect the realities of today’s market forces.

In the late 1990’s problems with the appraisal process became very evident. One lot appraisal came in as high as \$600,000 resulting in an annual fee of \$30,000. Several national, state and local cabin associations became organized to address these problems. A Cabin Coalition was formed and, with the help of three prominent legislators and much input from coalition members, corrective legislation was proposed and passed by Congress into law.

The Cabin User Fee Fairness Act of 2000 (CUFFA) was intended to provide a fair, market-based appraisal of lot values that would result in a ‘fair fee’ for cabin permits on the National Forests. This necessitated recognizing the full impact of the Forest Service permit restrictions, as well as regional and local restrictions, on market values.

CUFFA was supposed to do this and we believe that was the intent of Congress. However, adjusting for permit restrictions within the appraisal has been disallowed by the Forest Service. Furthermore, we are convinced the ‘reduced fee,’ 5% of fee simple market value, does not fully account for the negative impact of all of those restrictions on the use of the lot. This is the heart of the problem. (See Examples of Why We Are Concerned following footnotes).

The 5% is said by the Forest Service to be a *discounted* rate. The presumption is that this supposedly discounted rate adjusts *fully and fairly* for the market impact of all permit restrictions. It does not. Furthermore, this premise has never been confirmed by publicly shared market research, nor documented by the Forest Service. The first potentially ruinous appraisals of this appraisal cycle are due to be completed by mid-March, 2008. Initial results foretell huge increases in fees.

The great majority of cabin users come from middle class circumstances and many cabins have been in the same family for generations. Cabin owners care about the Forests and the recreation experiences they provide all citizens, including their urban children. Their presence on the Forest stimulates local economies² and provides valuable tax dollars to local, state and federal government.³

Cabin owners are first-hand observers of the health of various Forest ecosystems and assist the Forest Service in monitoring the appropriate use of the Forest and its lands by other recreational users. Cabin owners volunteer time, labor and money,⁴ partnering with the Forest Service on a variety of projects. Our stewardship helps insure that the waters and land that sustain fish and wildlife remain clean and productive.

We teach our children the wonders of the natural world and strive to insure that the gifts of our Nation's Forests are passed on to our grandchildren and their grandchildren intact and unspoiled.

We strive to see that the 'Last Child in The Woods' is not found on *our* National Forest. These vitally important values will *only* be maintained if we, average American families and Recreation Residence users, are able to continue as permittees on the Forest.

Cabin owners are deeply invested in the Forest experience and value these unique environments and the recreation experiences afforded "in the woods." Many cabin owners have made substantial investments in local water and wastewater infrastructure as well as roads and other improvements. We understand *and accept* the reality of upward pressure on real estate values throughout the nation. We just ask that *fair market value be the real basis for our fees.*

A solution to this problem may be simple, even though the process of achieving a solution may be difficult. To be fair to both the United States and cabin permittees: **All restrictions imposed by the Forest Service permit language must be valued and used to adjust the market value of the subject lot**, either through the language of CUFFA or by some other means.

As citizens, with a significant investment in our cabins and improvements, we deserve an accurate and transparent presentation of the rationale, methodology, and calculation of proposed permit fees. This has not occurred to date under CUFFA as interpreted by the Forest Service. Our expectation is that the law must be fair and impartial. Both the letter and the spirit of the law must be taken into account in our social contract, which includes the relationship of citizens with their government.

Cabin owners believe that the spirit and intent of CUFFA were to see that ordinary Americans have the opportunity to experience our national forests through Recreation Residences. Therefore, we respectfully ask that Congress act to preserve the long and proud history of the Recreation Residence Program and our partnership with the Forest Service.

If a solution is not found, many cabin permit holders faced with exorbitantly high fees will be forced to obtain costly second appraisals, file appeals and/or pursue other legal and political means to attempt to find a fair, market-based solution.

If no solution is found, ultimately many cabin owners will be forced to put their cabins up for sale. Due to the exorbitantly high fees and use restrictions many will find it difficult, if not impossible, to sell them (see example 2 below). The costs will simply outweigh the benefits and no one, not even the wealthy, will pay such a high price for a cabin having such severe use restrictions and high yearly permit fees. This is *not* what was intended by Congress or CUFFA!

We seek sensible, informed intervention by thoughtful leaders in the Forest Service and Members of Congress on behalf of the over 14,000 cabin permit holders nationally, and the thousands of others who share the use of these cabins. We truly treasure the Forest experience made possible for our families on our National Forests. Our partnership with the Forest Service has been mutually beneficial and is one we would like to see continue for many generations to come.

Concerned Citizens of the Cabin Community

¹Federal Register, June 2, 1994, page 28727, "Recreation Residence Authorizations." It also is part of Forest Service Manual Chapter 2340 - Privately Provided Recreation Opportunities. The heading reads "2347.1 - Recreation Residences. (FSM 2721.23 and FSH 2709.11)" with the text as follows:

"Recreation Residences are a valid use of National Forest System lands. They are an important component of the overall National Forest recreation program and have the potential of supporting a large number of recreation person-days. They may provide special recreation experiences that might not otherwise be available. It is Forest Service policy to continue recreation residence use and to work in partnership with holders of these permits to maximize the recreational benefits of these residences."

² A statistical survey of cabin owners indicates that the average cabin owner spends \$6,555 in the local economy (within 50 miles of the cabin) for food, drink, staples, recreation, improvements and repairs every year. Cabin owners also contribute \$549 in donations and provide 56 volunteer hours (\$1051) annually. That is a per cabin total of \$8155 every year into the local cabin community! (NFH Economic Impact Survey, 2006)

³ Government fees and taxes generated by the Recreation Residence Program exceed \$25M annually. (NFH Economic Impact Survey, 2006)

Examples of Why We are Concerned

1) The Little Colorado Summer Home Group in the Apache-Sitgreaves National Forest in Arizona has received their final appraisal and their fee will be \$10,000 per year! Additional preliminary appraisal data (now in Regional Forest Service offices) likely will result in similar annual fees in the tens of thousands at Priest Lake, ID, Turpin Meadow, WY, Pettit Lake, ID, Lake Wenatchee, WA and many others.

2) One appraisal conducted at Lake Wenatchee in 1999, had the pre-CUFFA based fee been fully implemented, would have resulted in an annual fee of more than \$16,000 per year. Unable to afford this huge fee increase, the cabin owners tried to sell their cabin through an auction last year, beginning with a minimum bid of \$50,000, and they had no takers. Current valuations suggest the annual fee will be well over \$30,000 per year. With no relief or sale, these folks will be required to demolish and remove their family's recreation residence.

3) Recent attempts at state land lease sales on Priest Lake, Idaho, with fees increased from the current 2.5% to 5% of land values, had no takers, even though these lots *have* lease rights that are *denied* Forest Service permit holders. Appropriately, the state of Idaho is re-examining this very negative market response. Also, the St. Louis County, Minnesota Assessor has informed us that his county charges 2.7% for their cabin lease fees on county leased lots. This speaks volumes about our concerns in regard to the inaccuracy of the 5% fee for Forest Service cabin permit holders as well.

4) Specific Forest Service restrictions vary significantly from region to region. Yet CUFFA directs a 5% annual fee nationwide in addressing all these restrictions. How can a fixed fee be applied to variable circumstances and yet be considered fair or accurate?