Part 515 – Exhibits

Subpart G – Floodplain Easement Guidance Documents

515.61 Appraisal Guidance

a. General

All easement acquisition appraisals completed for this program shall be completed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) as a self-contained report, and appraisal instructions as issued by NRCS.

States will obtain the appraisal services through an appropriate procurement method. Funds will be obligated directly to the appropriate vendor per the procurement document. It is recommended that States use a Blanket Purchase Agreement or Indefinite Delivery/Indefinite Quantity contract. Funds would then be obligated as appraisals are ordered through a task order process. Procurement of the appraisal must be done by an authorized official.

Prior to the start of appraisal field work, the local NRCS representative will schedule a site visit with the Appraiser and the landowner or the landowner's representative. During the site visit the proposed easement boundaries will be reviewed, the residential structures and outbuildings to be appraised will be identified, and the easement access route (if the easement is not adjacent to a publicly dedicated right-of-way) will be confirmed.

The local NRCS representative will provide the Appraiser with the documentation and information indicated in the Scope of Services for Appraisals identified in the applicable procurement notice. The parcel of land to be appraised will be clearly delineated on a map that includes the area to be enrolled, the ingress/egress route(s) or point of access, and any other descriptive information as may be available.

The Appraiser shall notify the local NRCS representative and the landowner of the date and time for conducting the appraisal fieldwork. Notification shall be a minimum of 72 hours prior to beginning work. If the work is not started on the planned date, the Appraiser shall notify NRCS and the landowner of the revised date and time that work will begin.

b. Appraisal Criteria

All real property appraisers performing appraisals under this program shall be State Certified General Real Property Appraiser, or obtain a temporary practice permit, in conformance with Title XI of the Financial Institution's Reform, Recovery and Enforcement Act of 1989 (FIRREA) in the State(s) where the subject property is located and be in good standing with the licensing authority where the credential was issued. Appraiser must have demonstrated competency in compliance with USPAP in conducting appraisals of properties of the requested type. A copy of the appraiser's State license or practice permit shall be provided to the Contracting Officer (CO) at the time of bid submission. Work will not be granted until such time as the CO has reviewed and approved the licensing credentials, and the experience and education requirements of the contractor and any subcontractors.

If the contractor elects to subcontract the appraisal work, the subcontractor must also be a State Certified General Real Property Appraiser or obtain a temporary practice permit in the State(s) where the subject property is located and be in good standing with the licensing authority where the credential was issued. Proof of the subcontractor's qualifications must be supplied within ten (10) days of contract award.

In the event the contractor wishes to change personnel or subcontractors, the contractor shall submit the same proof of qualifications and licensing. Approval shall be obtained from the Contracting Officer prior to the assignment of appraisal work to such individuals. Failure to obtain such approval may invalidate the award and cause termination of the contract in accordance with Federal Acquisition Regulation 52.249-8.

c. Appraisal Reports

The authorized official shall request all appraisal reports or appraisal services in writing from the appraiser by using the mandatory Appraisal Specifications for Appraisals of Real Property for the Floodplain Easement Program and Scope of Work. The State EWP-FPE program manager should contact the National EWP-FPE program manager for the up-to-date appraisal specifications. No changes are permitted in the appraisal specifications and scope of work for FPE appraisals without prior written approval from the Division Director, Easement Programs Division.

NOTE: The authorized official will determine who will conduct the technical appraisal review at the time of ordering the appraisal. The technical review appraiser will be available to answer any questions of a technical nature related to the appraisal process that may arise and work with the appraiser during the appraisal process to assure acceptable work product is received.

The authorized official shall request all technical appraisal review reports in writing from the review appraiser. The authorized official will provide the selected technical review appraiser a copy of the above material at the time of ordering the appraisal. The assigned technical review appraiser shall discuss the scope and timing of the assignment with the requesting authorized official as necessary.

d. Appraisal Review

All appraisals used for acquisition of FPE easements under this section must undergo a technical appraisal review and the appraisal be determined acceptable by the appraisal technical reviewer prior to making an offer.

Technical reviews are performed by a qualified State Certified General appraiser to assess the quality of the appraisal report based upon USPAP and appraisal instructions compliance and assess the appraisal theory and methodology used in completing the appraisal. See Technical Appraisal Review Specifications for Appraisals of Real Property for the Floodplain Easement Program.

Any appraisal report with value opinions that will result in NRCS acquisition costs in excess of $1 million will be sent to NRCS staff appraiser together with the technical appraisal review report for post review and acceptance prior to issuing an offer to a landowner.

Technical reviews may be completed through contracting, subject to the following requirements or NRCS may enlist the help of partner agencies such as Forest Service, Rural Development, or Farm Service Agency staff appraisers that are qualified to conduct a technical review as stated in G below. All technical appraisal reviews and a copy of the appraisal will be submitted to the National Headquarters staff appraiser upon receipt.

NOTE: Pursuant to the Economy Act, relating to the payment or transfer of funds to another agency, NRCS may choose to procure services from another Federal agency to conduct technical appraisal reviews. A Memorandum of Agreement between agencies may be developed which will include Technical Appraisal Review Specifications and reporting requirements for the appraisal review.

Any appraisal report revisions required by the Technical Reviewer shall be completed and returned to the Reviewer not later than the 14th calendar day after receipt as verified. Revised appraisal reports will be submitted by NRCS to the technical reviewer no more than three times. If, after the third submission, the report is still found to be unacceptable, the report will be rejected and/or disapproved. The review appraiser will clearly show why the appraisal report is inadequate.

When the appraisal report is in violation of appraisal principles and standards, Agency or Departmental Regulations or directives, is inconsistent with facts, or asserts unsupported conclusions the report will be rejected. If the Technical Review Appraiser finds the appraisal report to be illogical, unreasonable, not supported by data cited, or is inconsistent with other data, the report will be rejected. Rejection indicates particular problems of integrity. Minor technical non-conformance with USPAP should not be the cause of rejection of an appraisal report unless the deficiencies affect the reliability of the value estimate. Fees will be withheld if the report clearly and flagrantly does not comply with the contract specifications.

If in the technical appraisal reviewer's opinion, the value estimate is unsupported or not supported strongly enough then the report is disapproved. NRCS reserves the right to order a second appraisal to confirm, support or replace the original appraisal report. In the event the second report supports a significantly different value estimate, and the second report is ultimately approved, this determination effectively rejects the original appraisal report and payment will be withheld by NRCS.

If in the technical appraisal reviewer's opinion, the value estimate is strongly supported and complies with all contract specifications then the report is approved. Any corrections or revisions by the appraiser are deemed insignificant in the technical appraisal reviewer's opinion and will not affect the values identified in the appraisal report. Fees will be paid upon receipt of accurate invoices.

e. Reviewer Qualifications and Independence

Any technical review appraiser under this program shall be a State Certified General Real Property Appraiser in conformance with Title XI of the Financial Institution's Reform, Recovery and Enforcement Act of 1989 (FIRREA) and be in good standing with the licensing authority where the credential was issued. The review appraiser must have demonstrated competency in compliance with USPAP in conducting and reviewing appraisals of properties of the requested type. The review appraiser must provide documentation of appraisal education courses attended including at least forty (40) classroom hours of training in performing technical appraisal reviews to the authorized official.

This requirement may be waived by the National Program Manager if the particular technical review appraiser has demonstrated extensive experience and/or knowledge in conducting technical appraisal reviews.

The authorized official will determine and document in the landowner's file prior to issuing any work order to a review appraiser that the review appraiser selected meets the above requirements. Assistance in the selection process is available from NHQ.

To ensure objectivity and independence in the review process, and to preclude the appearance of conflicts of interest or wrongdoing, review appraisers shall not:

- Be responsible for case processing or negotiating the acquisition, disposal, authorization, or exchange of any appraised property.
- Review an appraisal prepared by the reviewer's immediate supervisor.
- Review an appraisal for a property they personally and recently appraised.
- Review an appraisal prepared by an appraiser where possible conflicts may exist.

As with appraisers, the review appraiser must not become an advocate of the project. The review appraiser's task is to evaluate the technical aspects of the appraisal.

f. Maintaining Current Appraisals

When acquiring easements, offers shall be based upon the timeframe of the useful life of the appraisal as stated in the technical appraisal review report accepting the appraisal or not exceeding 12 months from the effective date of the appraisal in the case of an administrative review accepting the appraisal report. In no case will an Option Agreement to Purchase be provided to the landowner if the appraisal is over 12 months old from the effective date of the appraisal to the date of the proposed offer.

If the appraisal report has exceeded the useful life of the appraisal, the appraiser who conducted the original appraisal will be contacted to determine a more current date of value in compliance with USPAP and NRCS appraisal instructions. If necessary, additional appraisal instructions can be provided. After receipt of this new appraisal with a more current date of value, an appraisal review will be conducted in accordance with these policies and an acceptability determination of the appraisal report be made prior to making an offer to the landowner.

g. Changes in Acres, or Substitution of Land, or Title Conditions from Original Appraisal

In cases where the appraisal was completed without the benefit of an easement boundary survey, and after the survey is completed there is a difference in acres in the easement area from the appraisal, the acres and price may be administratively reconciled provided that the surveyed acreage is within 5 percent of the acreage estimate used in the appraisal.

States should administratively reconcile the easement acres and values by using a per acre value determined by dividing the appraised easement value by the estimated easement acreage in the appraisal. This per acre cost is then multiplied by the surveyed acreage to arrive at the administratively adjusted appraisal value of the easement. The administratively adjusted appraisal of the easement is then compared to the value of the easement using the GARC, and the landowner is offered whichever value is less.

NOTE: The administrative adjustment process does not apply to substitution of land proposed for the easement which is different from stated in the appraisal, access, or title conditions including reservations, encumbrances, easements, or conveyances as stated in the appraisal.

If the difference in acreage between the appraisal and the actual survey is greater than 5 percent, a supplemental appraisal report and appraisal review report will be required with the same effective date as the original appraisal.

Other changes in conditions that would require a supplemental appraisal report would include:

- If there is a substitution of land proposed for the easement which is different from stated in the appraisal.
- Change in access, or change in title conditions including reservations, encumbrances, easements, conveyances, other conditions different than as stated in the appraisal.
- The landowner wishes to remove outbuildings, affixed property of the residence, or other items that were considered in the initial appraisal.

The original appraiser will be contacted and provided the information that has been changed from the original appraisal. The appraiser will provide a supplemental appraisal report as stated in the Appraisal Specifications for Appraisals of Real Property for the Floodplain Easement Program and Scope of Work considering the changes to reflect a different value opinion as of the effective date of the original appraisal. This supplemental appraisal will have an appraisal review completed in accordance with this section as stated above, and a new determination as to acceptability of the appraisal will be made in accordance with this section.

h. Format for Supplemental Appraisal Reports.

Supplements or amendments to appraisal reports, such as for updating value estimates, changes in acreage, substitution of land, changes in title conditions, additional support or explanation, or to correct a previous appraisal report shall follow the format required by Appraisal Specifications for Appraisals of Real Property for the Floodplain Easement Program and Scope of Work for Supplemental Appraisal Reports. All items must be addressed.

i. Confidential Nature of Appraisals

Appraiser's valuations and supporting reports are confidential information and the appraiser shall strictly abide by the Confidentiality provisions of the Ethics Rule of USPAP, which provides as follows:

1. An appraiser must protect the confidential nature of the appraiser-client relationship.
2. An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results. Any information that falls under the Privacy Act that is identified and provided to the appraiser that is confidential in nature must be clearly marked as confidential by the appraiser. Any release of the appraisal can only be made after all information contained in the appraisal report labeled or identified as confidential has been redacted.
3. Work performance required by this contract will involve access to potentially sensitive

information about governmental and landowner issues. All contractor personnel must comply with the terms of AGAR 452.224-70, Confidentiality of Information, as well as provisions of the Privacy Act of 1974, 5 U.S.C. 552a. Additionally, the Contractor and its employees shall comply with privacy requirements of personal information relating to natural resources conservation programs in accordance with Section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (P.L. 107-171**), and the prohibition on disclosure of geospatial information or information provided by a landowner or agricultural producer as required by section 1619 of the Food, Conservation, and Energy Act of 2008, P.L. 110-246.**

4. An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than:
    - the client and persons specifically authorized by the client;
    - state enforcement agencies and such third parties as may be authorized by due process of the law; and
    - a duly authorized professional peer review committee.

For appraisals prepared for proposed enrollment in FPE program, the client referred to above shall be NRCS.

Program regulations (7 CFR § 1467.18(c)) provide that "any appraisals, market analysis, or supporting documentation that may be used by the NRCS in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of the NRCS in accordance with applicable law."

According to the Department of Justice appraisal policy, utmost caution must be exercised before permitting any Government appraisals to be examined by a landowner or his/her attorney. NRCS will not provide the landowner with the appraisal document; however, agency personnel may discuss and explain the rationale and basis on which the appraisal value was established. NRCS will **not** provide a copy of the appraisal report to the landowner prior to recording of the easement.

j. Appealability of Appraisals

Real estate appraisals that are used to establish the basis for the agency easement offer are expressly final when completed by a qualified contract appraiser and accepted by NRCS in accordance with 7 CFR § 614.4 (a)(3) and therefore are not appealable.

k. Records Management

Agency approved appraisal reports, administrative appraisal reviews, and technical appraisal review reports shall be retained in the official NRCS file associated with the easement.