



August 31, 2006

Easement Program Division
Natural Resources Conservation Service
United States Department of Agriculture
1400 Independence Avenue, SW., Room 6819-S
Washington, DC 20250-1400

To Whom It May Concern:

Thank you for the opportunity to comment on the Interim Final Rule on the Farm and Ranch Lands Protection Program, published July 27, 2006 in the *Federal Register*. On behalf of the more than 25,000 members of our professional appraisal organizations, we offer our support for the general thrust of the amended appraisal policies of the Natural Resources Conservation Service and some suggestions on how they can be made more consistent with generally accepted valuation principles.

We see three significant valuation amendments in the Interim Final Rule:

- The NRCS is amending its definition of fair market value to mean the value of the landowner's whole property before the easement, and the value of the landowner's whole property after the easement.
- The agency is also requiring that appraisals to be performed by State-certified general appraisers, as opposed to the current requirements, which allow State-licensed appraisers to perform appraisals.
- Finally, the Interim Final Rule amends current regulations to require that appraisals conform to both the Uniform Standards of Professional Appraisal Practices (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) and any Supplemental Standards issued by NRCS.

Please find our recommendations below.

Fair Market Value

The preexisting NRCS definition of market value provides for the value of the whole property before the easement as compared to the remainder property after the easement. As the Interim Final Rule points out, this requirement fails to consider the value of the adjacent land to the remainder property. We believe this definition is also inconsistent with the appraisal guidelines found in the Uniform Appraisal Standards for Federal Land Acquisitions, and we support amending this definition.

However, the proposed definition of market value provided by the NRCS attempts to mandate before and after procedures for valuing property encumbered by an easement. We find this new definition to be cumbersome, and frankly unnecessary, as the Yellow Book already provides a well-established definition of market value¹.

¹ "Market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller

Instead, we recommend the Final Rule to reference or require adherence to the Yellow Book definition of market value. From there, appraisers will rely on Section B-20 of the Yellow Book entitled, "Easements", which outlines the before and after methodology for valuing easements or other acquisitions, providing distinctions between real property and personal property and referencing current appraisal terminology.

Appraiser Requirements

The NRCS Interim Final Rule requires appraisals to be performed by State-certified general appraisers, as opposed to the current requirements, which require merely a State-licensed appraiser. We agree that conservation easement appraisals are complex and inappropriate for state licensed appraisers, who have only limited education and experience, particularly with the income approach or the application of the Yellow Book. Further, we note that on August 4, 2006 the United States Congress enacted legislation (H.R. 4, the Pension Protection Act) which includes an enhanced definition of "qualified appraiser" to perform appraisals for tax purposes on lands donated as conservation easements. The new definition recognizes appraisers who have earned an appraisal designation from a recognized professional appraiser organization.

With this, we believe the NRCS would also benefit by recognizing appraisers who have obtained designations from professional appraisal organizations like the Appraisal Institute, the American Society of Appraisers and the American Society of Farm Managers and Rural Appraisers. Designated appraisers generally have more education and experience than non-designated appraisers. Coupled with new technical requirements, such as completion of education on the Yellow Book, eminent domain and conservation, we believe requirements to be professionally designated or state certified general would greatly increase the quality of appraisals, and competency level of appraisers, performing appraisal work for the NRCS.

Additionally, with regard to the income approach, the Interim Final Rule states: "Conservation easement appraisals are complex because they involve using an income approach in calculating the value of the easement, etc." Based on this sentence it appears that the income approach is used solely in valuing easements, which is not the case. The income approach may be the best approach in some circumstances, but other approaches like the sales comparison or cost approach may be more appropriate. We agree these are complex assignments and for this reason we support elevated appraiser qualification requirements. But we believe the comments relative to the income approach should be removed entirely and allow the appraiser to use whichever valuation approaches are appropriate for the circumstance.

Appraisal Standards

Finally, the Interim Rule amends current regulations to require that appraisals conform to both the Uniform Standards of Professional Appraisal Practices (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and any Supplemental Standards issued by NRCS. We believe USPAP and the Yellow Book to be complementary and this policy to be consistent with other Federal

to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal." Uniform Appraisal Standards for Federal Land Acquisitions, 2000.

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agencies. However, we believe the language in Paragraph 4 under "Appraisal" could be improved by stating, "Requiring the use of both USPAP and UASFLA is simply stating that appraisals should be completed in accordance with the professional standards for Federal appraisals".

Thank you for the opportunity to comment on the Interim Final Rule. We look forward to working with the NRCS as it implements its Final Rule. Should you have any questions or need assistance, please contact Don Kelly, Vice President of Public Affairs, Appraisal Institute, 202-298-5583, dkelly@appraisalinstitute.org, Steve Runyan, President Elect, American Society of Farm Managers and Rural Appraisers, (661) 587-7200, srunyan@bak.rr.com, or Richard Gilmore, Government Relations Chair, American Society of Appraisers, at (413) 821-0211, rgilmore@cobank.com.

Sincerely,

Appraisal Institute
American Society of Appraisers
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