

~~D. Monitoring the Conservation Plan~~

~~NRCS will monitor the status of the conservation plan in accordance with highly erodible land and wetland conservation status review requirements. Prior to entering the protected property, NRCS will notify the landowner in accordance with National Food Security Act Manual procedures.~~

~~E. Conservation Practice Implementation Cost Share Sources~~

~~Conservation practices scheduled in the FRPP parcel's conservation plan may require cost sharing or incentive payments to implement. The following programs are potential sources of cost sharing or incentive payments:~~

- ~~(i) Agricultural Management Assistance Program (AMA)~~
- ~~(ii) Agricultural Water Enhancement Program (AWEP)~~
- ~~(iii) Chesapeake Bay Watershed Incentive Program (CBWI)~~
- ~~(iv) Conservation Reserve Enhancement Program (CREP) (long term contracts only)~~
- ~~(v) Conservation Reserve Program (CRP)~~
- ~~(vi) Conservation Stewardship Program (CSP)~~
- ~~(vii) Environmental Quality Incentives Program (EQIP)~~
- ~~(viii) Wildlife Habitat Incentives Program (WHIP)~~
- ~~(ix) Wetlands Reserve Program (WRP) (long term contracts only)~~

~~Note: Cost sharing or incentive payments provided to a landowner through the above-mentioned programs are subject to the provisions and policies of those programs.~~

519.62 Determining Easement Price

The requirements contained in this section and exhibits are mandatory for all FRPP easement acquisitions by NRCS. No modifications to these requirements are permitted without prior written approval from the Deputy Chief for Easements and Landscape Planning.

A. Easement Price

(1) For parcels that are products of cooperative agreements and amendments signed after May 23, 2008, the cooperating entity may opt for either of the following two methods to determine the affect of the conservation easement on the subject property in accordance with these instructions. All appraisals completed must comply with the Uniform Standards of Professional Appraisal Practice (USPAP), Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), and appraisal instructions as issued by NRCS.

(i) An USPAP appraisal of the proposed easement area before placement of the easement and a USPAP appraisal of the proposed easement area as if the easement is in place. The difference between these two values will be the affect of the easement on the subject property.

(ii) An UASFLA (or Yellow Book) appraisal by completing an appraisal for market value as defined below of the larger parcel before the easement (before value) is placed and an appraisal for market value as defined below of the larger parcel as if the easement is in place (after value) as of the date of a current date. The difference between the before value and the after value is the price of the easement. The larger parcel concept involves not only the land proposed for the easement area but all surrounding land that meets the definition of larger parcel. The valuation of the effect of imposition of the easement is based upon Federal rules, which consider any loss in value to the whole property as well as any increase in value of the whole property due to imposition of the easement.

(2) For parcels that are products of cooperative agreements and amendments signed in fiscal year 2006, fiscal year 2007, and fiscal year 2008 before May 23, 2008, all appraisals completed for this program must comply with USPAP, UASFLA, and appraisal instructions as issued by NRCS. Cooperative agreements for these fiscal years may be amended after May 27, 2009 to allow for the appraisal to comply with USPAP or UASFLA and appraisal instructions as issued by NRCS.

(3) For parcels that are products of cooperative agreements and amendments signed in fiscal year 2006, all appraisals completed for this program must comply with USPAP, UASFLA, and appraisal instructions as issued by NRCS with an effective date of the appraisal as of the date of execution of the cooperative agreement between the entity and USDA/NRCS. Parcels under fiscal year 2006 where an appraisal was completed after June 30, 2007 the effective date of the appraisal can be no more than 12 months from the date of closing.

B. Authorized Official

Authorized official for the purpose of this section is an employee who can independently fulfill the requirements of this section and who is not supervised or formally evaluated by any person authorized to process, negotiate or approve any easement. The authorized official must not be any person who is authorized to process, negotiate, or approve any easement.

C. Appraiser Qualifications

All real property appraisers performing appraisals under this program must be State-certified general real property appraiser, or obtain a temporary practice permit, in conformance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) in the State or States where the subject property is located and be in good standing with the licensing authority

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where the credential was issued. The appraiser must have demonstrated competency in compliance with USPAP in conducting appraisals of agricultural properties with and without conservation easements of the requested type and must provide documentation of appraisal education courses attended including either eminent domain or conservation easements course completion for either appraisal methods stated in section 519.62A(1) and UASFLA (Yellow Book) course for any UASFLA appraisal.

D. Appraisal Requirements

All appraisal reports or appraisal services must be requested in writing from the appraiser using the mandatory specifications for appraisals of real property for the FRPP and scope of work, which is identified as exhibit 519.102. No changes are permitted in the appraisal specifications and scope of work for FRPP appraisals without prior written approval from NRCS NHQ. Exhibit 519.102 is incorporated as part of this manual. In no case will any purchase be closed without an appraisal review stating the appraisal is acceptable.

E. FRPP Investments Exceeding \$50,000

In cases where the FRPP investment in a property exceeds \$50,000, an onsite review by the NRCS State office is required prior to the NRCS NHQ and/or the Office of General Counsel reviewing the conservation easement deed, appraisal, and appraisal review.

F. NRCS Appraisal Reviews

All appraisals used for acquisition of FRPP easements under this section must undergo a technical appraisal review. In no case will a closing take place before meeting these requirements.

(i) Technical reviews are performed by a qualified State Certified General appraiser who assesses the quality of the appraisal report based upon USPAP and UASFLA compliance as applicable, appraisal instructions, and the appraisal theory and methodology used in completing the appraisal.

The purpose of the technical appraisal review is to provide an opinion of the acceptability of the appraisals that provide a market value of the subject property before acquisition of an easement (before value) and an opinion of market value of the subject property remaining after the proposed easement has been placed (after value) as of a current date minus any adjustments for excess irrigation water to arrive at the effect on value of the easement.

The purpose of two opinions of value is to establish the effect on value resulting from imposition of a conservation easement. The appraisals, technical reviews, and technical review reports must be completed in compliance with USPAP, UASFLA (as applicable), and appraisal instructions issued by NRCS. For the purpose of UASFLA appraisal reviews, the Federal rules for acquisition will be used.

(ii) Any appraisal report with value opinions that will result in NRCS acquisition costs in excess of \$1 million must be sent to NRCS staff appraiser with the completed technical review for post review and acceptance prior to any commitment by NRCS or closing.

(iii) Technical reviews may be completed through contracting at the State or National level, 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 who are qualified to conduct a technical review as stated in paragraph H below. All technical appraisal reviews and a copy of the appraisal will be submitted to the NRCS staff appraiser within 14 days of completion and receipt by the State NRCS office.

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 Exhibit 519.105, "Technical Appraisal Review Specifications," and reporting requirements for the appraisal review.

G. Technical Review Appraiser Qualifications

Any technical review appraiser under this program must be a State-certified general real property appraiser in conformance with title XI of FIRREA and be in good standing with the licensing authority where the credential was issued.

(i) The review appraiser must have demonstrated competency in compliance with USPAP in conducting and reviewing appraisals of agricultural properties with and without conservation easements of the requested type.

(ii) The review appraiser must provide documentation of appraisal education courses attended, including eminent domain or conservation easements, at least 40 classroom hours of training in performing technical appraisal reviews, and if conducting Yellow Book appraisal reviews, an UASFLA course must be included in the qualifications section of the review report.

H. Technical Appraisal Review Requirements

(1) The authorized official must request all technical appraisal review reports in writing from the appraisal reviewer by using the mandatory technical appraisal review specifications and scope of work (see exhibit 519.105). No changes are permitted in the technical appraisal review specifications and scope of work without prior written approval from NHQ. Exhibit 519.105 is

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incorporated as part of the Conservation Programs Manual.

- (2) Technical appraisal reviews will be completed and the appraisal determined acceptable by the technical reviewer prior to closing any transaction.
- (3) The scope of work is a desk technical review to ensure the appraisal meets the definition of an appraisal. It examines the appraisals to ensure that they meet applicable appraisal requirements, which include USPAP, UASFLA (as applicable), and NRCS appraisal instructions. If multiple appraisals are submitted on a property, a technical review will be completed on each appraisal. The technical appraisal review will comply with USPAP Standard 3, UASFLA (as applicable), and will be typed, dated, and signed by the reviewer. The review appraiser must determine the acceptability of the appraisal in accordance with, USPAP, and/or UASFLA, and supplemental NRCS appraisal instructions.
- (4) The review appraiser must obtain a copy of the listed standards at their own expense and have them available during any technical review for reference.
- (6) The technical review appraiser will determine if the appraisal is approved or not accepted in accordance with Specifications for Appraisals of Real Property for FRPP (exhibit 519.102).
 - (i) If the technical review appraiser determines the appraisal report is recommended, the review appraiser will set forth in the review report the recommended value, if the appraisal report complies with the assignment standards and adequately supports the value estimate, and specifically document any damages or benefits to any remaining property. The NRCS State office will provide a copy of the technical review report and the appraisal report to the NHQ staff appraiser for review and monitoring.
 - (ii) If the technical review appraiser determines the appraisal report is not acceptable, the review appraiser will provide NRCS with the reasons the appraisal report was not acceptable and any corrective actions that are needed to provide an acceptable technical review. NRCS will determine if the appraiser should be contacted (and by whom) and determine if the appraisal report should be returned for corrections if a follow-up technical review is completed and the appraisal report is not accepted a second time, the NRCS State office will consult with the NHQ staff appraiser to determine if the entity should be required to order a new appraisal.

I. Limitations

- (1) The review appraiser may not change an appraisal report, except for minor mathematical or typographical errors, and must call those minor changes to the appraiser's attention. Only the original appraiser is permitted to edit or otherwise revise the original appraisal report.
- (2) The review appraiser may not substitute personal judgment for that of the appraiser or dismiss careful appraisal judgment solely because it cannot be supported by conclusive market data. However, the review appraiser may question the appraiser's judgment when it is illogical, unreasonable, not supported by data cited, or is inconsistent with other data.
- (3) The review appraiser must not allow agency goals or adversarial pressure to influence the reviewer's opinion of an appraisal report's value estimate. The review appraiser's personal opinion regarding the proposed action must not be allowed to influence the review process.
- (4) The review appraiser must not attempt to influence the appraiser's judgment or direct the appraiser toward a value estimate. The only effort should be to obtain a properly supported value estimate based on factual evidence and valid analysis of all facts available through use of approved appraisal approaches and techniques. Minor technical nonconformance with UASFLA and USPAP should not be the cause of rejection of an appraisal report unless the deficiencies affect the reliability of the value estimate.

J. Reviewer Independence

- (1) To ensure objectivity and independence in the review process and preclude the appearance of conflicts of interest or wrongdoing, review appraisers must not—
 - (i) Be responsible for case processing or negotiating the acquisition, disposal, authorization, or exchange of any appraised property.
 - (ii) Review an appraisal prepared by the reviewer's immediate supervisor.
 - (iii) Review an appraisal for a property they personally and recently appraised.
 - (iv) Review an appraisal prepared by an appraiser where possible conflicts may exist.
- (2) As with appraisers, the review appraiser must not become an advocate. The review appraiser's task is to evaluate the technical aspects of the appraisal.

K. Maintaining Current Appraisals

- (1) For parcels that are the products of cooperative agreements from fiscal year 2005 and prior years and cooperative agreements from fiscal year 2007 and subsequent years, the effective date of the appraisal must be within 12 months of the closing date.
- (2) For parcels that are the products of cooperative agreements from fiscal year 2006, the date of the execution of the cooperative agreement will serve as the basis for the appraisal effective date and the basis for calculating contribution amount of NRCS in accordance with FRPP requirements. Parcels under fiscal year 2006 where an appraisal was completed after June 30, 2007 the effective date of the appraisal can be no more than 12 months from the date of closing.

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

- (1) In cases where the appraisal was completed without the benefit of a legal survey that reflects a difference in acres in the easement area from the appraisal, the acres and price may

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be administratively reconciled, provided the surveyed acreage is within 5 percent of the acreage estimate used in the appraisal or the difference in values based on the surveyed acreage is within \$5,000 of the appraised easement value, whichever is less.

(i) States should administratively reconcile the easement acres and values by using a per-acre value determined by dividing the appraised easement value (the difference between the before and after value) by the estimated easement acreage in the appraisal. This per-acre cost is then multiplied by the difference in acres between the easement acres in the appraisal and the survey to arrive at the adjustment amount. This adjustment amount is then added to or subtracted from the difference between the before and after appraisal to arrive at the administratively adjusted price of the easement.

(ii) This does not apply to substitution of land proposed for the easement that is different from what is stated in the appraisal, access, or title conditions including reservations, encumbrances, easements, or conveyances as stated in the appraisal.

If the adjustment is above the administrative limit, the new information must be provided to the original appraiser. The appraiser will provide a revised appraisal report in the supplemental report format shown in section 519.62M, considering the changes to reflect a different value opinion as of the effective date of the original appraisal.

This revised 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.

(2) If there is a substitution of land proposed for the easement that is different from what is stated in the appraisal, access, or title conditions, including reservations, encumbrances, easements, conveyances, or other conditions different than as stated in the appraisal, a revised appraisal report and appraisal review report will be required with the same effective date as the original appraisal. The original appraiser will be contacted and provided the information that has been changed from the original appraisal. The appraiser will provide a revised appraisal report considering the changes to reflect a different value opinion as of the effective date of the original appraisal. This revised 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.

M. Format for Supplemental Appraisal Reports

Supplements or amendments to appraisal reports, such as for updating value estimates, changes in acreage, additional support or explanation, or to correct a previous appraisal report, must be referenced for incorporation with the original report in accordance with USPAP. The following format is recommended. All items must be addressed.

(1) **Title Page.**—Include the same information as on the original appraisal report. Label the report as a "Supplemental Appraisal Report."

(2) **Summary of Facts.**—Include the following:

(i) Owner's name or other identification of the property

(ii) Size

(iii) Highest and best use

(iv) New opinion of value

(v) Valuation date is the effective date of the original report

(3) **Summary of Original Appraisal.**—Cite the date and value opinion from the original appraisal. If previous updates have been made since the original appraisal, cite value opinions and value dates from all updates as well as the original appraisal.

(4) **Changes.**—Explain the reason for the appraisal supplement, such as to update an opinion of value due to survey acres, amend a previous appraisal report, add additional support or explanation, or other.

(5) **New Opinion of Value.**—Discuss the changes that have occurred since the original appraisal.

Discuss the method used to update the opinion of value and cite the evidence, analysis of trends, or both that support the updated value opinion. Conclude with a statement of the new opinion of value and the valuation date which is the effective date of the original report, followed by the contract appraiser's signature.

(6) **Certification as required in Exhibit 519.102 item F2**

(7) **Addenda.**—Include sales data detail for new sales cited, summaries of data and trend analyses, maps of sales analyzed, and any other information relied upon but not included in the text.

(8) **Binding.**—If the supplemental appraisal report is more than four pages long, it must be bound in a durable report cover with appropriate identification.

N. Confidential Nature of Appraisals

Appraiser's valuations and supporting reports are confidential information, and the appraiser must 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 confidential information that falls under the Privacy Act that is provided to the appraiser must be

clearly marked as confidential by the appraiser. The appraisal may only be released after all information labeled or identified as confidential in the appraisal report has been redacted.

(3) An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than—

- (i) The client and persons specifically authorized by the client.
- (ii) State enforcement agencies and such third parties as may be authorized by due process of the law.
- (iii) A duly authorized professional peer review committee.

O. Freedom of Information Act (FOIA)

FOIA provisions may result in the release of all or part of the appraisal report to the public in accordance with FOIA requirements once the appraisal has been determined acceptable by NRCS. Landowners may request a copy of the appraisal in writing under this section.

P. Closing

No closing may take place until the appraisal report is determined acceptable in accordance with this section.

Q. NHQ Oversight

NHQ appraisal staff will review States for compliance with these appraisal and appraisal review requirements. These reviews will be constructive in nature and offer assistance and guidance in the processing of easement appraisals and reviews.

R. Records Management

Agency-approved appraisal reports and technical appraisal reviews must be retained in the landowners file associated with the easement in accordance with section 519.60L of Subpart G, "Conservation Easements."

519.63 Title Insurance

~~A. Title Review Requirements~~

~~(1) Prior to purchasing a conservation easement or other interest in land, all title evidence, such as public land records, must be reviewed to ensure that good and legally sufficient title in the property is obtained. NRCS State program managers should request a copy of the cooperating entity's policy on title standards. At a minimum, the cooperating entity must ensure that:~~

- ~~(i) For parcels that are the products of cooperative agreements from FY 2006 through FY 2005, American Land Title Association (ALTA) title insurance will be issued for all acquisitions.~~
- ~~(ii) For parcels that are the products of cooperative agreements from FY 2006 through FY 2008, ALTA title insurance will be issued for the cooperating entity's share of the value of all acquisitions, and ALTA (1991 U.S. Policy) title insurance will be issued for the United States' share of the value of all acquisitions. The cooperating entity will purchase two title insurance policies: one for the cooperating entity's share and any share donated by the landowner and an ALTA (1991 U.S. Policy) for the FRPP share. The ALTA (1991 U.S. Policy) insures the "United State of America, by and through the Secretary of Agriculture." NRCS will reimburse the cooperating entity for the cost of the ALTA (1991 U.S. Policy) title insurance. The NRCS share of title insurance will be calculated as follows according to the Department of Justice Title Standards 2001: The first \$100,000 of the NRCS FRPP easement share will be 50% of the easement cost; the remaining balance of the NRCS FRPP easement share will be 25% of the easement cost.~~
- ~~(iii) For parcels that are the products of cooperative agreements from FY 2009 and successive years through the term of the 2008 Farm Bill, ALTA title insurance will be issued for all acquisitions.~~

~~(2) The parcel must be free and clear of any and all encumbrances on the title except those that the cooperating entity and NRCS decide are acceptable.~~

~~Note: If any such encumbrances are acceptable, they must be listed on the certificate of use and consent. Any encumbrances that are not acceptable must be subordinated to the provisions of the conservation easement deed.~~

- ~~(3) The title insurance company is approved by the State insurance commissioner or its equivalent.~~
- ~~(4) Where a cooperating entity's policy fails to secure these minimum requirements, NRCS may terminate funding to the cooperating entity based on decisions made by the State Conservationist and NHQ.~~
- ~~(5) For parcels that are the products of cooperative agreements from FY 2005 and prior years, the State FRPP program manager will review the preliminary title commitment and ensure that~~
 - ~~(i) The encumbrances on schedule B of the title commitment are acceptable to USDA.~~
 - ~~(ii) Unacceptable encumbrances are removed or subordinated before FRPP funds are released.~~
 - ~~(iii) The encumbrances that are to be covered are listed in the title insurance policy.~~
 - ~~(iv) Any additional actions needed or concerns are resolved before NRCS approves the title.~~
- ~~(6) For parcels that are the products of cooperative agreements from FY 2006 through FY 2008,~~