

## Part 527 – Easement Common Provisions

### Subpart E – Appraisal

#### 527.40 General

A. The Farm and Ranch Lands Protection Program (FRPP) and the Healthy Forest Reserve Program (HFRP) require appraisals to determine valuation. The Agricultural Conservation Easement Program – Agricultural Land Easement (ACEP-ALE) component generally requires appraisals unless the Chief has authorized alternative methods. Appraisals may be used in the Agricultural Conservation Easement Program – Wetland Reserve Easement (ACEP-WRE) component, Wetlands Reserve Program (WRP), and the Emergency Watershed Protection Program Flood Plain Easements (EWPP-FPE). This subpart applies to all programs unless otherwise specified.

B. For ACEP-WRE and EWPP-FPE applications in locations and with land uses that have had the fair market value determined by an areawide market analysis (AWMA), separate individual appraisals should not be obtained. Individual appraisals are required for ACEP-WRE and EWPP-FPE acquisitions in locations or on land uses without an approved AWMA.

C. The ordering official requests all appraisal reports or appraisal services in writing from the appraiser using the applicable NRCS appraisal specifications and statement of work for the appropriate NRCS easement program. No changes are permitted in the NRCS appraisal specifications and scope of work for appraisals. If changes are needed, contact the NRCS NHQ national appraiser.

- (1) For ACEP-ALE and FRPP, the eligible entity is responsible for obtaining the appraisal report and providing it to NRCS. The appraisal must identify the eligible entity as the client and NRCS as an intended user.
- (2) For EWPP-FPE with residences, the appraisal reports are ordered by the sponsor. Payment for the appraisal is determined by the sponsor agreement.
- (3) For all other NRCS easement programs, except as identified in paragraphs (1) and (2) above, the appraisal reports are procured by and paid for by NRCS.

D. NRCS easement acquisition appraisals must be completed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) except as provided in paragraph E. All appraisals must comply with NRCS appraisal specifications and statement of work. The estate to be appraised includes only the acres to be encumbered by the easement.

E. For ACEP-ALE and FRPP only, the eligible entity may obtain appraisals completed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA). UASFLA uses the larger parcel concept, which involves not only the land proposed for the easement area but all surrounding land that meets the valuation definition of the larger parcel. The valuation of the effect 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 placing the easement on the property.

F. For ACEP-ALE only, the eligible entity may request approval to use an AWMA or another industry-approved method to determine the fair market value of the agricultural land easement. **Prior** to entering into a cooperative agreement, these requests must be submitted by the eligible entity to the State Conservationist and, for use of AWMA's, be approved by the Easement Programs Division (EPD) director or, for use of other industry-approved methods, be approved by the Chief.

G. All appraisals used for acquisition of NRCS program easements must undergo a technical appraisal review (technical review) in accordance with subpart F. All technical appraisal reviews are procured by or completed by NRCS.

H. NRCS will not accept or use an appraisal listing the landowner as the client. The landowner cannot be party to the hiring or directing of the appraisal assignment. The landowner may pay for the cost of the appraisal through the eligible entity or sponsor.

## **527.41 NRCS National Appraiser Duties and Responsibilities**

A. The NRCS national appraiser is the NRCS valuation authority for NRCS easement programs. The NRCS national appraiser and staff provide leadership on easement valuation processes. Easement valuation includes appraisals, AWMAs, technical reviews, and, for ACEP-WRE, WRP and EWPP-FPE only, geographic area rate caps (GARCs). Instructions for the development of GARCs are found in the ACEP and EWPP-FPE program manuals.

B. The NRCS national appraiser reviews both the appraisal and the technical review of the appraisal when the easement value exceeds \$1 million. For ACEP-ALE, FRPP, HFRP, and EWPP-FPE, the easement value is the difference between the before value and the after value reported in the appraisal. For ACEP-WRE and WRP, the easement value is calculated by multiplying the percentage GARC by the market value in the appraisal. Based on the program, the review must occur as follows:

- (1) For HFRP, EWPP-FPE, WRP and ACEP-WRE: prior to making an offer to the landowner
- (2) For ACEP-ALE and FRPP with noncertified entities: prior to closing on the easement and prior to issuing payment
- (3) For ACEP-ALE and FRPP with certified entities: as part of the quality assurance review conducted after easement acquisition

C. The NRCS national appraiser reviews both the appraisal and technical review for any easement project requesting a policy waiver to ensure the policy waiver will not affect the easement valuation.

D. Compliance reviews are conducted on a sampling of appraisals and technical reviews to verify compliance with appraisal and technical review requirements. Compliance reviews are completed on the first appraisal completed by an appraiser or review appraiser and on at least 10 percent of the appraisals completed by each State, each year. Compliance reviews are completed after the technical review is completed and are not required prior to closing. If the compliance review is done prior to closing and issues are found, the issues must be addressed prior to closing. If the compliance review is completed after closing, the issues will need to be addressed as directed by the NRCS national appraiser.

E. The NRCS national appraiser is the point of contact for NRCS State office staff, NRCS contracting staff, contracted appraisers, and review appraisers. The NRCS national appraiser answers technical questions, interprets appraisal specifications, and provides guidance on easement appraisal issues.

F. The NRCS national appraiser resolves conflicts in technical review specifications and conducts periodic teleconferences with review appraisers.

G. The NRCS national appraiser may conduct technical appraisal reviews when contract review appraisers are not available.

H. The NRCS national appraiser provides guidance for ensuring that the United States is receiving equal or greater economic value for easement administration actions. (For ACEP, see Title 440, Conservation Programs Manual, Part 528, Subpart R; for EWPP-FPE, see Title 390, Emergency Watershed Protection Program Manual, Part 514, Subpart G.)

I. The NRCS national appraiser will be consulted on questions concerning whether the appraiser meets the qualifications necessary to perform work for NRCS.

J. For ACEP-WRE, WRP or EWPP-FPE only—

- (1) AWMAAs are reviewed and approved by the NRCS national appraiser for use in establishing GARCs.
- (2) The NRCS national appraiser and appropriate national program manager reviews the GARCs to determine that the process used to develop the GARC recognizes the rights being purchased through the easement. All GARCs must be approved by the EPD director prior to use.

### **527.42 Appraisal Type**

A. There are two types of appraisals completed for NRCS easement programs. The types of appraisals are market value appraisals and conservation easement appraisals.

B. For ACEP-WRE and WRP only, market value appraisals provide the “as is” or current market value of the property on which the ACEP-WRE or WRP easement will be placed. The appraisal is completed in compliance with USPAP and NRCS ACEP-WRE appraisal specifications.

C. For all non-ACEP-WRE enrollments, conservation easement appraisals are “before and after” appraisals. The appraisal provides the market value of the easement property before the easement is placed and the market value of the easement property after the easement is placed on the property. The difference in the two values is the indication of the effect of the easement on the property or the value of the easement.

### **527.43 Appraiser Qualifications**

A. The appraisal will be either a market value appraisal or a conservation easement appraisal, depending on the specifics of the applicable easement program. Below are qualifications required for an appraiser conducting each type of appraisal:

- (1) Market Value Appraisal.—All real property appraisers performing appraisals must be a State-certified general real property appraiser, or obtain a temporary practice permit equal to the State-certified general real property appraiser, in conformance with title XI of the Financial Institution’s Reform, Recovery and Enforcement Act of 1989 in the State or States where the subject property is located and be in good standing with the licensing authority where the credential was issued. Appraisers with disciplinary action taken by the licensing authority of any State within the past 5 years that resulted in suspension of the credential are disqualified. The appraiser must have demonstrated competency in compliance with USPAP in conducting appraisals of properties of the requested type.
- (2) Conservation Easement Appraisals.—In addition to the above requirements, appraisers must have experience conducting appraisals with and without conservation easements of the requested type. Appraisers must have completed either a conservation easements valuation course or eminent domain course. A conservation easement valuation course is preferred. One-day seminars are not sufficient to meet this requirement. For ACEP-ALE and FRPP appraisals completed under UASFLA, the appraiser must have completed a UASFLA (Yellow Book) course and have experience completing UASFLA (Yellow Book) appraisals.
- (3) For non-ACEP-ALE enrollments, a copy of the appraiser’s State license or practice permit and documentation of the education requirements must be provided to the contracting officer (CO) at the time of bid submission. The CO reviews the licensing credentials and experience of the contractor. The CO must grant approval of the contractor and any subcontractors

- before work begins. The CO will contact the NRCS national appraiser to resolve any questions on appraiser qualification prior to issuing the contract award.
- (4) For ACEP-ALE and FRPP enrollments, the ACEP-ALE or FRPP eligible entity is responsible to obtain the appraisal and provide a copy to NRCS. ACEP-ALE or FRPP eligible entities must ensure the appraiser meets the qualifications prior to ordering an appraisal. Appraisals completed by appraisers not meeting the NRCS qualifications will not be accepted.
  - (5) Documentation of the appraiser's experience and education must be included in the appraisal report.
  - (6) Any subcontractor must meet the same appraiser qualification. The documentation must be provided to the CO prior to beginning work.

#### **527.44 Authorized Official**

For all programs except for ACEP-ALE or FRPP enrollments, the authorized official ordering the appraisal is an NRCS employee who can independently fulfill the requirements and who is not supervised or formally evaluated by any person authorized to process, negotiate, or approve any easement.

#### **527.45 Appraisal Reports**

- A. Appraisal reports used in NRCS easement programs are relied upon to provide the detail necessary to understand the property and market characteristics. Because many of the NRCS users will neither personally inspect the property nor be familiar with the local area and local market, the appraisal report must include the level of detail necessary to thoroughly explain and support the property description, highest and best use analysis, market characteristics, adjustment process, and all conclusions so that all reviewers and NRCS users have an adequate understanding of the statements, opinions, and conclusions offered within the report.
- B. For appraisals ordered by NRCS, the following information will be provided to the appraiser:
  - (1) Landowner name, address, and telephone number.
  - (2) Written permission from the landowner or an authorized representative authorizing the assigned appraiser to enter the property for appraisal purpose.
  - (3) Aerial photograph of the subject property with the location of the proposed easement area identified, access to the easement area identified, easement boundary identified, and an estimate of the acres in the proposed easement identified.
  - (4) Legal description of subject or parent property and preliminary legal description of the proposed easement area or survey, if available.
  - (5) Copy of the proposed conservation easement deed, HFRP and EWPP-FPE only.
  - (6) Specific details of any existing easements, reservations or other restriction currently encumbering the subject property as provided by the landowner.
  - (7) Documentation of production data provided by landowner
  - (8) For ACEP-WRE, WRP or EWPP-FPE only, a copy of FSA Form CCC-505, "Voluntary Permanent Direct and Counter Cyclical Program Base Acres Reduction," completed and executed by the landowner for crop base and allotments located on the proposed easement area. This form will not be processed by FSA until the easement is closed. The appraiser will verify the amount of crop base to be retired or moved on the proposed easement area and if any remaining crop base exists on the easement area.
  - (9) If water rights are included in the easement area, documentation identifying the volume of water rights to be retained for the subject property as required by the specific NRCS easement

- program. This includes the name of the irrigation company and the number of shares or amount of ownership.
- (10) Current information as to the status of title of ownership, such as copies of deeds.
  - (11) If available, completed landowner disclosure worksheet, preliminary certificate of inspection and possession and the hazardous materials field inspection checklist and any available information pertaining to the probability of existence of hazardous substances that might be found on the property to be appraised.
  - (12) Copy of preliminary title commitment covering the proposed easement area if available.
  - (13) If available and as applicable, a copy of the easement management plan, conservation plan, or restoration plan of the proposed easement area.
- C. For ACEP-ALE or FRPP appraisals ordered by eligible entities, the entity is responsible to provide the information in section 527.45B except for item (8) and, for item (5), a copy of the draft agricultural land easement deed.
- D. The following material must be maintained in the NRCS State office file:
- (1) A copy of the approved appraisal
  - (2) Technical review report approving the appraisal
  - (3) National appraiser approval of any appraisal and technical review for easement values exceeding \$1 million
  - (4) Electronic versions may be stored in lieu of the hardcopies. The individual NRCS State office hardcopy easement file must identify the electronic location of the valuation documents for that easement.

#### **527.46 Confidential Nature of Appraisals**

- A. Appraisers abide by the confidentiality provisions of the ethics rule of USPAP outlined below:
- (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.
  - (3) 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.
- B. Appraisals obtained by NRCS are not released prior to acquisition of the easement.
- C. Appraisers must identify any information in the appraisal report that is proprietary or that must be kept confidential.
- D. Freedom of Information Act (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, and the acquisition of the easement with the landowner is completed. The landowners may request a copy of the appraisal under the Privacy Act after acquisition.
- E. For ACEP-ALE and FRPP, NRCS may share the technical review report with the eligible entity.

#### **527.47 Appraisal Expiration, Changes, and Updates**

- A. Updates of appraisals, approved by NRCS, are required when an appraisal expires, or when there are acreage changes, changes in access or title conditions, or for ACEP-ALE or FRPP, if there are

changes to the conservation easement deed terms. Appraisal updates for expired appraisals, acreage changes and changes in title use the supplemental report format in section 527.48.

B. The supplemental report format may not be used for ACEP-ALE or FRPP appraisals that were not submitted to NRCS for technical review. The appraisal submitted must meet NRCS appraisal specifications and incorporate the required updates or changes.

C. Land substitution requires a new appraisal.

D. Only appraisals with a current date of value (effective date) and an approved technical review are valid for NRCS easement programs. The appraisal effective date must meet the specific program requirements as follows unless a shorter useful life is identified by the technical reviewer and approved by the national appraiser:

- (1) For ACEP-WRE, WRP, HFRP, and EWPP-FPE, the effective date of the appraisal must be within 12 months of the date the offer is executed by the landowners and NRCS. Once the offer is accepted and executed by all required parties, the appraisal will not expire. If an approved appraisal has an effective date older than 12 months before the offer is executed by all parties, the appraisal is expired and a new appraisal is required.

For EWPP-FPE using the predisaster date as the effective date, the appraisal will not expire once the technical review is approved.

- (2) For ACEP-ALE with noncertified entities, the effective date of the appraisal must be within 6 months before or after the date the cooperative agreement or applicable amendment is executed identifying the parcels selected for funding or must be within 12 months of the easement closing date.

**Note:** Appraisals obtained by the eligible entity within 6 months prior to executing the cooperative agreement or amendment may be submitted for a technical review after the agreement or amendment is executed, but the appraisal must still meet the NRCS requirements. Therefore, entities contemplating applying for ACEP-ALE cost-share assistance are encouraged to provide the appraisers with the NRCS ACEP-ALE appraisal specifications and scope of work at the time the appraisal is acquired.

- (3) For FRPP with noncertified entities, the effective date of the appraisal must be no more 12 months prior to the easement closing date.
- (4) For ACEP-ALE with certified entities, the effective date of the appraisal must be within 6 months before or after the date the grant agreement or applicable amendment is executed identifying the parcel selected for funding or must be within 12 months of the easement closing date. The technical review of the appraisal will be conducted after the easement is acquired as part of the quality assurance review process.

E. The appraisal expires when the effective date it is older than the time periods specified in paragraph C, above, or is beyond the useful life period as stated in the technical review, whichever is less. If the appraisal expires, a new appraisal is required. Contact the appraiser who conducted the original appraisal to determine if a more current date of value in compliance with USPAP can be provided. The new appraisal may be provided using the supplemental report format in section 527.48. A technical review is required on the new appraisal report.

F. Appraisal updates are also required for acreage changes, changes in access or title conditions, or for ACEP-ALE, changes to deed terms. Appraisal updates use the supplemental report format in section 527.48.

G. Acreage Changes.—In cases where the appraisal was completed without the benefit of a legal survey, the acres and price may be administratively reconciled provided—

- (1) The surveyed acreage is within (plus or minus) 10 percent of the acreage estimate used in the appraisal.

Formula:  $(\text{Appraised Acres} - \text{Surveyed Acreage}) / \text{Appraised Acres} \leq \pm 10\%$

- (2) The administrative adjustment is less than or equal to \$50,000.
- (3) Administrative adjustment uses a per-acre easement value determined by dividing the appraised easement value or market value by the estimated acreage in the appraisal. Multiply the per-acre easement value or market value by the difference in acres between the appraised acres in the appraisal and the surveyed acres to arrive at the adjustment amount. The adjustment amount must be rounded down to the nearest whole number. This adjustment amount is then added to or subtracted from the appraised easement value or market value to arrive at the administratively adjusted appraisal.

Easement or Market Value X (Estimated Acres – Actual Acres)

Estimated Appraised Acres

- (4) An updated appraisal is required when the surveyed acreage is more than 10 percent of the acres in the original appraisal or the administrative adjustment exceeds \$50,000.

H. Substitution of Land.—Substituted land requires a new appraisal. Administrative adjustment is not made when land proposed for the easement is different (substitutions) from the parcel identified in the appraisal.

I. Changes in Access or Title Conditions.—Changes in access or title conditions, including reservations, encumbrances, easements, or conveyances that are different than stated in the appraisal, require reconsideration by the original appraiser. Changes in title conditions do not include encumbrances that will be released or subordinated prior to closing. Contact the original appraiser to review the access or title changes to determine if they affect the original appraisal report. If the access or title changes do not change the original appraisal then the appraiser may provide a recertification letter that certifies the original value. If the access or title changes affect the original appraisal conclusions the supplemental appraisal format is used to report the changes to the original appraisal report.

J. ACEP-ALE or FRPP Changes to Deed Terms.—For ACEP-ALE or FRPP appraisals conducted based on a draft easement deed the eligible entity must provide NRCS, at least 90 days prior to the planned easement closing date, with documentation of the effect of the final deed terms on the original appraised value. To accomplish this the eligible entity may do one of the following:

- (1) Provide written certification to NRCS that there are no changes in the deed terms from the draft deed provided to the appraiser
- (2) Obtain a recertification letter from the original appraiser stating that the final agricultural land easement deed terms have no effect on the appraised value
- (3) Obtain an appraisal update using the supplemental report format in section 527.48

### **527.48 Supplemental Appraisal Report Format**

A. Changes to appraisal reports previously approved by NRCS, such as for updating value estimates or effective date of value, changes in acreage, changes in access or title conditions, changes in easement deed terms, additional support or explanation, or to correct a previous report, must follow the format identified for supplemental appraisal reports.

B. The supplemental appraisal report format incorporates the original appraisal report by reference in accordance with USPAP, Advisory Opinion 3. Only the original appraiser may incorporate the

original appraisal by reference, therefore only the original appraiser may use the supplemental appraisal report format.

C. Supplemental appraisal reports are completed using the following format. 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 to the Appraisal Report for \_\_\_\_\_.”
- (2) Summary of Facts for the Supplemental Appraisal Report.—Include the following:
  - (i) Owner’s name or other identification of the property
  - (ii) Client’s name
  - (iii) Intended users and use
  - (iv) Size
  - (v) Highest and best use
  - (vi) New opinion of value
  - (vii) Valuation date is the effective date of the original report or the date of the new inspection if updating the effective date
  - (viii) Date of the supplemental appraisal 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 or analysis of trends 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 unless the reason for the supplement is to change the effective date, followed by the contract appraiser’s signature.
- (6) Certification as required in the original appraisal report.
- (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 comprises more than four pages, it must be bound in durable report cover with appropriate identification.
- (9) Electronic Copy.—An electronic copy of the supplemental report must be provided along with the hardcopy.