Dated: December 26, 2005.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 06–2888 Filed 3–28–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB83

Procedures for Appraising Recreation Residence Lots and for Managing Recreation Residence Uses Pursuant to the Cabin User Fee Fairness Act

AGENCY: Forest Service, USDA.

ACTION: Issuance of final directives.

SUMMARY: The Cabin User Fee Fairness Act of 2000 directs the Forest Service to promulgate regulations and adopt policies for carrying out provisions of the act. Accordingly, the Forest Service is adopting final directives issued in the Forest Service Manual (FSM) Title 2300, Recreation, Wilderness, and Related Resource Management; FSM Title 2700, Special Uses Management; Forest Service Handbook (FSH) 2709.11, Special Uses Handbook; and FSH 5409.12, Appraisal Handbook. These final directives, and revised special uses regulations published elsewhere in this part of today's **Federal Register**, set out requirements and provide direction to agency personnel for managing recreation residence uses and assessing fees for those uses of National Forest System lands pursuant to the act.

DATES: These directives are effective May 3, 2006.

ADDRESSES: The documents used in developing these directives are available for inspection and copying at the office of the Director, Lands Staff, Forest Service, USDA, 4th Floor South, Sidney R. Yates Federal Building, 1400 Independence Ave., SW., Washington, DC, during regular business hours (8:30 a.m. to 4 p.m.), Monday through Friday, except holidays. Those wishing to inspect these documents are encouraged to call ahead (202) 205–1248 to facilitate access to the building.

Other documents not in the decision-making record that were requested during the comment period on the proposed directives are beyond the scope of this direction making process conducted pursuant to 5 U.S.C. 553(c). Those interested in obtaining these documents may request them under the Freedom of Information Act by writing to the USDA Forest Service, Freedom of Information Act/Privacy Act Branch, Office of Regulatory and Management Services, 1400 Independence Ave., SW., Mail Stop 1143, Washington, DC 20250–1143.

FOR FURTHER INFORMATION CONTACT: Julett Denton, Lands Staff, (202) 205–1256.

SUPPLEMENTARY INFORMATION:

Table of Contents

1. Background
2. Purely Technical, Nonsubstantive Revisions
3. Public Comments on Proposed Revisions to Recreation Residence Directives
   Forest Service Manual
   • Chapter 2340—Privately Provided Recreation Opportunities
   • Chapter 2720—Special Uses Administration
   Forest Service Handbook 2709.11—Special Uses
   • Chapter 30—Fee Determination
   Forest Service Handbook 5409.12—Appraisal Handbook
   • Chapter 60—Appraisal Contracting
4. Regulatory Certifications
   Environmental Impact
   Regulatory Impact
   No Takings Implications
   Civil Justice Reform
   Unfunded Mandates
   Federalism and Consultation and Coordination With Indian Tribal Governments
   Energy Effects
   Controlling Paperwork Burdens on the Public
5. Text of the Final Directive
6. Table I—Section-by-Section Comparison Between the Proposed and Final Recreation Residence Directives

1. Background

A discussion of the history and development of direction and regulations for the administration of recreation residences is found in the final rule to Title 36, Code of Federal Regulations, part 251, subpart B, published elsewhere in this part of today's **Federal Register**.

Most of the changes required by the Cabin User Fee Fairness Act of 2000 (CUFFA) affect direction for administering recreation residences contained in the Forest Service Manual (FSM) and Forest Service Handbook (FSH) directives. Accordingly, the changes to recreation residence management identified in CUFFA will be implemented through revisions to the FSM and FSH pursuant to CUFFA. Table I at the end of this notice has been prepared as an aid to understanding the directive changes being adopted. Table I displays the recreation residence directive provision, its reference to the appropriate section of CUFFA, and a section-by-section comparison of the proposed and final direction.

2. Purely Technical, Nonsubstantive Revisions

All references to enactment of CUFFA as having occurred on October 12, 2000 have been revised to reflect that CUFFA was actually enacted on October 11, 2000. In addition, Forest Service Manual 2347.12, governing caretaker cabin user fees, has been revised for clarity and for purposes of using the terminology in the corresponding provisions in CUFFA.

3. Public Comments and Responses To Proposed Revisions To Recreation Residence Directives

A discussion on the general nature of comments and a response to comments on the proposed rule are found in a final rule published elsewhere in this part of today's **Federal Register**.

Forest Service Manual

Chapter 2340—Privately Provided Recreation Opportunities

2340.05—Definitions. This section included a definition of a ''caretaker cabin'' and reference that a cabin needed to be occupying a lot within a recreation residence tract.

Comment. Many respondents commented that limiting the use of cabins to only those situated on a lot within a recreation residence tract is inconsistent with CUFFA.

Response. The Forest Service agrees with these comments. The final direction includes a revised definition for a caretaker cabin. The revised definition is more reflective of the definition of a caretaker cabin that appears in CUFFA and does not necessarily require that the location of a caretaker cabin be situated within a recreation residence tract. In making this revision, however, the Forest Service is not implying that it will consider authorizing the construction of new cabins outside of existing recreation residence tracts for the purpose of creating a caretaker cabin use. However, the revised definition will provide the authorized forest officer with the option to authorize an existing privately-owned cabin on National Forest System (NFS) land to be used for caretaker cabin purposes in those rare circumstances where a privately-owned cabin may already exist outside of a designated recreation residence tract. Examples might be existing privately-owned cabins currently authorized by the Forest Service for use as an isolated cabin, a residence, or as part of a larger use and occupancy of NFS land, such as in conjunction with a grazing allotment or for mining purposes.

The Forest Service also discovered a technical error in this section of the proposed direction. The coding should have been 2340.5, not 2340.05. The final direction includes this correction.

2347.1—Recreation Residences. This section provided direction that the Forest Service would, to the maximum extent practical, manage the recreation residence program to preserve the opportunity for individual and family-oriented recreation.

There were no substantive comments received on this section. However, in the final directive, paragraph 7 has been added to address the concerns expressed by many respondents that community- or association-owned improvements should not be authorized to an individual under the recreation residence term permit, but rather, should be authorized under separate permit and authority to the association or entity representing the recreation residence owners.

2347.12—Caretaker Cabins. This section provided direction concerning the manner in which a caretaker cabin may be owned and authorized, the considerations that the authorized officer should take into account when determining whether to authorize caretaker cabin use, and the annual fee to be charged for caretaker cabin uses.

Comment. Many respondents commented that it was unclear as to how the proposed direction concerning caretaker cabin uses was different from current agency direction. Respondents suggested that the **Federal Register** notice should have included a discussion of those differences. These respondents also suggested that the proposed direction requiring that a caretaker cabin be authorized with an annual permit, Form FS–2700–4, as opposed to a term special use permit for a recreation residence, Form FS–2700–5a, is discriminating against caretaker cabin uses.

Response. The Forest Service agrees that there was no discussion in the preamble to the May 13, 2003, **Federal Register** notice (68 FR 25751) of the differences between the existing and proposed policy on caretaker cabins. However, the proposed direction included a table (Table I) which provided a section by section comparison between the current recreation residence direction and the proposed revision.

The proposed revision to Forest Service Manual (FSM) 2347.12a, which included language directing the use of an annual permit (Form FS–2700–4) to authorize a caretaker cabin, was not a proposed change from current agency direction for authorizing caretaker cabin uses. A caretaker cabin, by its nature can be, and often is, used as a year round, primary residence to fulfill its purpose of maintaining the security of a tract. As such, the authorized use is significantly different than a recreation residence use. Likewise, if a caretaker cabin use is authorized for a cabin situated outside of a recreation residence tract, as will be provided with the previously referenced revision to the definition of a caretaker cabin, then not only the use, but the location of the cabin would be inconsistent with the agency's direction that a recreation residence use be located within a recreation residence tract. In addition, the primary purpose of use and occupancy of a caretaker cabin is sufficiently different from that of a recreation residence use, and it should be authorized with the type of special use authorization appropriate for that special use. Therefore, the final directive will remain unchanged with respect to the type of special use authorization used to authorize the use of a cabin as a caretaker cabin.

The proposed direction under § 2347.12b includes the language which was intended to be reflective of section 607(b) of CUFFA, which directs that the fee for a caretaker cabin special use shall not exceed the fee charged for the authorized use of a similar typical lot in the tract. The final language in this part of the direction has been slightly revised to accommodate those situations where a caretaker cabin may not be located within a recreation residence tract. The revised language in the final direction provides direction for assessing an annual fee for a caretaker cabin that may be located neither on a recreation residence tract, nor on a recreation residence lot, by directing that the fee will be equal to a typical lot within the tract for which caretaker cabin services are being provided, that is most representative of the NFS land upon which the caretaker cabin is located.

Chapter 2720—Special Uses Administration

There were no substantive comments received on this chapter of the Forest Service Manual. No revisions have been made in the final directive.

Forest Service Handbook 2709.11—Special Uses Handbook

Chapter 30—Fee Determination

33.05—Definitions. This section included new definitions for terms used in CUFFA.

Comment. Numerous respondents suggested that the definitions of terms in the agency's directives mirror exactly the definitions of those terms as provided in CUFFA. Others suggested that the term ''market value'' should not be included in the final directive because it is a term of art which appraisers understand and that including the words ''giving due consideration to all available economic uses of the property at the time of the appraisal'' in the definition of market value was inconsistent with the provisions of CUFFA, is in conflict with the provisions defining Highest and Best Use in the appraisal specifications, and should be deleted.

Response. The Forest Service has reviewed the definition of all the terms included in the proposed directive revisions and has compared them to the corresponding definitions and the intent of CUFFA. A response to each definition is as follows:

Cabin. The definition has been revised to mirror the definition for a cabin as provided in section 604(4) of CUFFA.

Market Value. The term ''market value'' is not defined in CUFFA. However, the Forest Service believes that a definition for market value is necessary in agency direction. Section 605 of CUFFA directs the Forest Service, through the Secretary of Agriculture, to ensure, to the maximum extent practicable, that the basis and procedure for calculating cabin user fees results in a fee that reflects ''(1) the market value of the lot; and (2) regional and local economic influences.'' With this statutory mandate, the Forest Service believes that there is a need to clearly define the term ''market value,'' lacking any clear definition in CUFFA. The agency believes it would be remiss to simply rely on an assumption that market value is a term of art, which every appraiser understands and can articulate and apply consistently. Several definitions of market value have been utilized in appraisal publications and educational materials over time. The Forest Service believes it is important for all appraisers to utilize a current, common definition. Though other definitions may apply to transactions performed under other legal authorities, CUFFA directs that appraisals prepared under authority of the act be prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA). The two sets of appraisal standards have conflicting definitions, so the definition in the UASFLA takes precedence because those standards, though they are not themselves law, are based on Federal case law, legislation, and

administrative rules. Providing for a definition in agency direction is designed to maximize consistency in the interpretation and application of the concept of market value.

Within the proposed definition of market value, use of the language ''giving due consideration to all available economic uses of the property at the time of the appraisal'' was also evaluated in response to the comments received. The phrase cited is an integral part of the definition. However, this part of the definition is mitigated by the requirement in the appraisal guidelines that the identified highest and best use shall be the authorized use: A lot suitable for use as a recreation residence. No other potential highest and best uses shall be considered or discussed in the appraisal report.

Natural, Native State. The definition of this term in the proposed direction was very similar to that used in CUFFA and was not changed in the final direction.

Recreation Residence. This term was not defined in CUFFA. However, CUFFA includes several references to the ''recreation residence program,'' and CUFFA defines the term ''cabin,'' as a subset of recreation residence (see the final direction defining the term ''cabin''). Therefore, the Forest Service believes that for consistency in management, and clarity for the public, the term ''recreation residence'' must be defined to distinguish it from other types of cabin uses on NFS lands, such as historic cabins, isolated cabins, and cabins used for mining or grazing operations. The definition, however, has been revised in the final direction to remove the words ''auxiliary buildings and improvements,'' so that the definition of a ''recreation residence'' is equal to the definition of a ''cabin,'' as cabin is defined in CUFFA and this section of the direction. However, a recreation residence special use commonly includes the use and occupancy of NFS lands with not just a recreation residence, but also with ''auxiliary buildings and improvements.'' The cumulative location and distribution of the recreation residence, or cabin, and the associated permit holder owned auxiliary buildings and improvements on NFS land comprises the recreation residence ''lot,'' as the term ''lot'' is defined in the final rule at 36 CFR 251.51, published in a separate notice in this part of today's **Federal Register**. Auxiliary buildings and improvements are not a part of the recreation residence or cabin and have therefore, been deleted from the final definition of the term ''recreation residence.''

Related Improvements. A definition of ''related improvements'' was not included in the proposed rule or proposed directives. However, due to the comments received on the definition of ''recreation residence lot'' in the proposed rule, the Forest Service is adding this definition to clarify what constitutes a related improvement in the context of a recreation residence lot.

For the purpose of defining a recreation residence lot (36 CFR 251.51), ''related improvements'' include not only the examples of facilities and uses owned and maintained by the holder identified at 36 CFR 251.51, but may also include holder-owned facilities or uses of National Forest System lands operated or maintained by the holder in conjunction with the recreation residence use. For example, outbuildings, wood piles, retaining walls, picnic tables, driveways, parking areas, trails, boardwalks, campfire rings, seats, benches, the construction and maintenance of lawns, gardens, flower beds, landscaped terraces, and the manipulation and/or maintenance of native vegetation. Related improvements will not include native vegetation that is manipulated and/or maintained for the primary purpose of protecting property and mitigating safety concerns, such as the removal of hazard trees, and the treatment/management of vegetation, approved by the authorized officer, to reduce fuel loading and to create defensible space for wildfire suppression purposes, nor will it include tract association- or community-owned facilities that are authorized under a separate authorization to the recreation residence tract association or some other entity representing the owners of the recreation residence. The list of items identified in the definition of ''related improvements'' in section 33.05 is not intended to be an all-inclusive list.

Simple Majority. Section 614(c)(2) of CUFFA requires that a new appraisal or peer review of an existing appraisal be made by a majority of the cabin owners in a group of cabins represented in the appraisal process by a typical lot. To assure that Forest Service managers consistently understand and apply this provision of CUFFA, the agency believes that there is a need to clearly define what constitutes a ''majority'' as used in this section of CUFFA. The proposed direction did so by providing a definition of ''simple majority.'' However, since CUFFA and other sections of the directive use the term ''majority,'' instead of ''simple majority,'' this term has been changed to ''majority'' in section 33.05. The proposed direction provided a definition of ''more than 50 percent,'' and that definition remains the same in the final direction. In the case where a typical lot represents a grouping of an even number of lots, and a request is made for a new appraisal or peer review pursuant to section 614(c)(2) of CUFFA, the majority of the holders within that grouping would be at least 50% of the permit holders in that grouping, plus 1. A request for a peer review or new appraisal by only 50 percent of the holders within a grouping comprised of an even number of lots would not by definition, constitute a majority.

Tract. The definition of this term in the proposed direction was very similar to that used in CUFFA, and was not changed in the final direction.

Typical Lot. The first sentence of the definition of this term in the proposed direction was similar to the definition in CUFFA. The Forest Service expanded the definition in the proposed direction to describe to Forest Service managers how typical lots are to be used for appraisal purposes. There have been no changes to the definition of this term in the final directive.

33.13—Annual Adjustment of Recreation Residence Fee. This section prescribed the manner in which annual adjustments to recreation residence fees would be made and provided a series of examples for implementing the provisions of the proposed direction.

Comment. At least one respondent was critical of the Forest Service's proposal to continue to use the Implicit Price Deflator, Gross National Product (IPD–GNP) index in making annual changes to fees, stating that section 608(b) of CUFFA directs the agency to use the ''Index of Agricultural Land Prices,'' published and maintained by the Department of Agriculture. One respondent stated that since the proposed direction has no provisions to adopt the use of the Index of Agricultural Land Prices, it must mean that the Forest Service intends to incur an unnecessary expense of updating this section of the direction when the transition period (as prescribed in section 614 of CUFFA) is over, or the Forest Service hopes to bury the Index of Agricultural Land Prices and not use it at all.

Response. The proposed rule and proposed directives clearly disclosed the intent to use current and future indexing factors for making annual adjustments to recreation residence special use permit fees in compliance with the provisions in CUFFA. Section 614 of CUFFA describes the transition as that period of time during which the final rule, direction revisions, and new appraisal guidelines are promulgated,

adopted, and fully implemented, and a new base cabin user fee for all holders is established. Section 614(c) of CUFFA provides holders up to 2 years after the date of adoption of the final rule, direction revisions, and appraisal guidelines, to request a new appraisal or peer review. Additional time beyond the date of these requests will be needed for new appraisals and peer reviews to be conducted and a new base cabin user fee established. So it is conceivable that for some permit holders, the transition period described in CUFFA will continue for several years after the date of adoption of these final rules, direction revisions, and appraisal guidelines. During this transition period, section 614(a)(1) and (2) of CUFFA specifically direct that term special use permit fees for recreation residences shall be annually adjusted using the annualized 2nd quarter to 2nd quarter change in the IPD–GNP. The Forest Service's direction at § 33.13 of FSH 2709.11 reflects this provision of CUFFA.

In the preamble of the proposed rule (68 FR 25749), the Forest Service disclosed that it will begin to use the Index of Agricultural Land Prices to make annual adjustments to the base cabin user fee when the transition period (section 614 of CUFFA) ends. A notation on Table I, § 33.13 (68 FR 25779) stated that approximately 2 years after adopting the proposed rule and direction revisions (including the new appraisal guidelines), the Forest Service would develop supplemental direction to implement the provisions of section 608(a) and (b) of CUFFA. By waiting approximately 2 years before proposing and establishing agency direction for use of the Index of Agricultural Land Prices for annualized changes in recreation residence permit fees, the Forest Service will be able to then provide holders and interested members of the public, clear and focused fee direction concerning the use of that index.

Comment. Several comments were received which cited that in § 33.13 of the proposed directive, Example 2 displayed a year in which the annual fee increase could be in excess of 5 percent. At least one respondent who commented on this section of the direction suggested that it should be revised to result in situations where the annual fee will never increase by more than 5 percent because that is what is needed to comply with the limitation provision in section 608(d) of CUFFA.

Response. In Example 2, the increase in the fee from Year 2006 ($772) to the Year 2007 fee ($824) represented a fee increase of 6.7 percent. It appears, however, that the respondent's comment is based on an interpretation of the limitation provisions in section 608(d) of CUFFA, which suggests that the annual change in a cabin user fee can never exceed 5 percent. The Forest Service does not agree with this interpretation of section 608(d) of CUFFA. Section 608(d) directs that the Secretary shall:

(1) Limit any annual fee adjustment to an amount that is not more than 5 percent per year when the change in agricultural land values exceeds 5 percent in any 1 year; and

(2) Apply the amount of any adjustment that exceeds 5 percent to the annual fee payment for the next year in which the change in the index factor is less than 5 percent.

The Forest Service interprets this provision to mean that in any year in which the annual index amount exceeds 5 percent, the amount of the adjustment in excess of 5 percent will be carried forward in its entirety to the fee in the very next year in which the index factor is less than 5 percent, even if that results in a one year fee increase for that year in excess of 5 percent. Section 608(d) of CUFFA does not direct that there be a 5 percent fee increase limitation in the year in which the fee change in the index factor is less than 5 percent and the carryover adjustment(s) is applied. Example 2 in section 33.13 of the proposed direction was specifically designed with hypothetical index factors to demonstrate this interpretation of section 608(d) of CUFFA. Therefore, the Forest Service believes that the example is accurate, and disagrees with the interpretation of section 608(d) represented by the comment that agency direction should provide that an annual fee may never increase by more than 5 percent.

There were no revisions made to this section.

33.2—Fees When Determination Is Made To Place Recreation Residence on Tenure. This section provided direction for implementing the provisions of section 607(c) and (d) of CUFFA, describing the manner in which an annual fee will be assessed in the event that a decision is made to discontinue a recreation residence use.

Comment. Several respondents provided comments about particular provisions in the three options which call for a recovery of some of the foregone fees, in cases where the recreation residence use is going to be allowed to continue for at least 10 more years beyond the originally identified date of expiration and conversion to an alternative public purpose. The respondents noted that these provisions are not mandated in CUFFA, questioned the legality of requiring that a fee that includes as a ''surcharge'' a 10-year recovery of previously foregone permit fees, and that a 10-year recovery should not run with the lot and be made a part of the fee assessed to a subsequent owner of the recreation residence, should a change in ownership occur over the course of that 10-year fee recovery.

Response. Although it was not stated in the proposed direction, the options identified are a reiteration of current direction that has been in place since 1994. No changes from existing direction were proposed. Providing the 10-year recovery period was designed to benefit the owners of recreation residences, by preventing recreation residence owners from having to pay foregone fees in a single lump sum assessment. Rather, an economic impact to recreation residence owners has been mitigated in agency direction with the provision that allows owners to repay the foregone fees due the United States as an annual fee surcharge, in equal installments over a 10-year period.

While the Forest Service understands the burdens this fee recovery surcharge may impose on a new owner of the recreation residence, it is the responsibility of the prospective buyer, or any successor in interest, to be aware of the terms and conditions of the recreation residence special use permit, including fee obligations due the United States at the time they consider acquiring a recreation residence. The current owner's fee obligation to the United States, including any annual fee recovery surcharge can then be taken into account by prospective purchasers as a consideration in negotiating a purchase price with the seller of the recreation residence.

There were no revisions made to this section.

33.4—Establishing the Market Value of Recreation Residence Lot. This section provided general direction about the manner in which recreation residences are appraised and describes the basic concept of establishing groupings of lots having essentially the same or similar value characteristics.

Comment. Many comments were received concerning § 33.4, paragraph 1, that provided direction for fee adjustments made for measurable differences among recreation residences lots within a grouping. These respondents stated that this could be implied to mean that appraisers would have the authority to make (base cabin user fee) adjustments for measurable differences among recreation residences

within a grouping of lots, and to establish new groupings of lots and to select typical lots, and that giving this authority to appraisers violates the provisions of CUFFA. Other respondents stated that there should not be the need to make adjustments, because if there were measurable differences among recreation residence lots within a grouping, then that should trigger the need to establish a new grouping with a new typical lot. Some respondents suggested that one of the results of implementing the provisions of CUFFA, Departmental regulations, and agency policies may be the need to reconsider and reconfigure lot groupings, including the establishment of additional lot groupings and the corresponding selection of additional typical lots. Other comments suggested that recreation residence lots should be appraised in their native, natural state and suggested that the appraiser should be instructed to consider lots as inaccessible in the winter, unless snow is removed from the access road by either the Forest Service or a third party.

Response. The Forest Service agrees that as worded, paragraph 1 in § 33.4 could be interpreted to mean that an appraiser has the authority to make adjustments to base cabin user fees in cases where there might be measurable differences among recreation residence lots within a grouping of lots. Therefore, the language in paragraph 1 has been revised to clarify that only the authorized officer may make adjustments.

The Forest Service disagrees, however, with comments that suggested that measurable differences among recreation residence lots within a grouping of lots always signals the need to establish a new grouping and a new typical lot. While that may be appropriate in some cases, it may not always be an efficient or economically justifiable approach to establishing a base cabin user fee, particularly in cases where only one or two lots within a grouping of lots might have a measurable difference that, while measurable, will result in only a minor change to the base cabin user fee. Therefore, the Forest Service will leave this provision as an option for the authorized officer to consider and use in accommodating measurable differences between lots within a grouping as an alternative to establishing a new grouping and corresponding typical lot. However, paragraph 1 will be revised to include the word ''values'' to clarify that this provision means that adjustments to a base cabin user fee may be made when there are measurable value differences among recreation residence lots within a grouping of lots. The requirement that the authorized officer seek the advice of the assigned Forest Service review appraiser will also be added to paragraph 1.

The Forest Service disagrees that this sentence could also be interpreted to mean that an appraiser has the authority to create a new grouping of lots and select a correspondingly new typical lot. The direction in § 33.41 of the direction clearly directs that the establishment of groupings of lots, and the selection of a typical lot within each lot grouping, shall be made by the authorized officer with input from permit holders.

The comments that suggested that the appraiser should be instructed to consider the lots as inaccessible in the winter unless snow is removed from the access road may not have understood that this property characteristic is covered in § 33.4, paragraph 3(b). The appraiser is directed to consider, and adjust if appropriate, any limitation on access attributable to weather and other factors. The appraiser will consider the lot's access condition. If the property is inaccessible in winter, the appraiser will search for sales with similar access limitations.

The Forest Service also agrees that as part of the implementation of CUFFA and the adoption and implementation of the Secretary's regulations and agency policies, there may be an occasional need in some tracts for the authorized officer to either reconsider the groupings of lots and the identification of typical lots or make adjustments to base cabin user fees for certain lots within a grouping of lots. The need to do so would most likely occur in cases where the inventory of facilities, utilities, and access servicing a tract are not comparable to the facilities, utilities, and access servicing the typical lot. In these cases, the authorized officer will have the authority to, at his or her discretion, consider implementing one of the following options:

1. Establish a new grouping of lots having clearly different attributes of access, utilities, and facilities servicing those lots from those which have been inventoried and are servicing the typical lot and:

a. Identify with the holders a new typical lot to represent that new grouping.

b. Prepare a new permanent inventory of utilities, access, and facilities servicing that typical lot (sec. 33.42).

c. Conduct a new appraisal of that typical lot pursuant to the provisions of CUFFA. The Forest Service and the holder(s) shall pay equally for the cost of the new appraisal.

2. Where feasible, assign lots having clearly different attributes with another typical lot that may have been established in the tract and which has attributes of access, utilities, and facilities that are comparable to those lots.

3. Make adjustments to the base cabin user fee for those lots having utilities, access, and facilities that are so different from the attributes of the typical lot that it creates a measurable difference in value.

These options have been added to § 33.41.

Comment. Section 33.4 of the proposed direction also directed that an appraiser shall not select sales of land within developed urban areas when identifying comparable sales to arrive at an appraised value of a typical lot. Some respondents commented that the word ''urban'' should be defined because it has a specific meaning in most land use ordinances and that (1) cabin owners are concerned that appraisers may select comparable lots from urban and suburban-style subdivisions in rural areas and that (2) use of comparable lots from these sources has the potential to dramatically distort the valuation of NFS lots.

Response. The Forest Service agrees with those respondents who expressed these concerns. Urban is defined in ''The Dictionary of Real Estate Appraisal, Fourth Edition,'' as:

> Describes a mature neighborhood with a concentration of population typically found within city limits or a neighborhood commonly identified with a city.

A definition for ''urban'' has been added to section 33.05.

33.42—Inventorying Utilities, Access, and Facilities. This section directed the authorized officer to identify and inventory utilities, access, and facilities that provide service to each typical lot within a recreation residence tract. It also provides criteria or guidelines for the authorized officer to use in making a determination as to who paid for the capital costs to construct those utilities, access, and other facilities servicing each typical lot

Comment. Many comments were received concerning this section of the proposed direction. One of the purposes of this part of the proposed direction was to further define the fundamental premise in CUFFA, which directs that ''the Secretary shall presume that a cabin owner, or a predecessor of the owner, has paid for the capital costs of a utility, access, or facility serving the lot being appraised, unless the Forest Service produces evidence that the agency or a third party has paid for the

capital costs.'' Most who commented on §§ 33.42, and 33.42(a) and (b) of the proposed direction said it was inconsistent with the provisions in CUFFA, or '' defective'' in that the direction (1) attempts to determine by definition that certain improvements are not paid for by cabin owners, or their predecessors, and that an approach is not equivalent to producing evidence (as is required in CUFFA); (2) attempts to put the burden of proof (as to who paid for utilities, facilities, or access) upon the cabin owners, rather than on the Forest Service; and (3) establishes standards which would allow an authorized officer to make assumptions as to who paid for utilities, access, or facilities without producing actual evidence of that fact. Some who commented said that all evidence demonstrating payment of capital investments in utilities, access, and facilities must be in writing. Many respondents commented that this section of CUFFA requires the Forest Service to prove payment of the capital investment in access, utilities, and facilities by either the Forest Service or a third party. Many comments suggested that any time a holder is paying a standard rate for a utility service, included in that rate are the costs of capital investments of the facilities needed to convey/provide the service or utility. Lastly, almost all who commented on this part of the proposed direction disagreed with that portion of § 33.42(a) which specifically cited as an example, that the assessment of a tap fee or hook-up fee charged by a utility provider to a permit holder or their predecessor does not constitute a payment of the capital costs of providing those facilities to the lot.

Response. The primary purpose for the direction in section 33.42 was to provide clarity and consistency for implementing the inventory provisions of section 606(a)(1) of CUFFA. In the proposed directive, the Forest Service provided direction through the use of examples. Lacking this direction, permit administrators and authorized officers would be guided only by nondescript provisions in section 606(a)(1) of CUFFA which lends itself to differences in interpretation. That was clearly evident by the significant number of comments that were generated by the Forest Service's interpretation of section 606(a)(1) and demonstrates that there is no single, agreeable interpretation of this section of CUFFA. Therefore, the agency will exercise its discretion in providing further definition and guidance in its directives to assure consistency in interpretation and application of this part of CUFFA.

Most of the comments that were submitted concerning the examples provided in the proposed direction in §§ 33.42(a) and (b) disagreed with various elements of the proposed direction concerning evidence that constitutes payment for the capital costs of utilities, access, and facilities which provide access or services to a recreation residence lot. Those aspects of the comments received will be individually addressed, as follows:

1. *Responsibility for Determining Evidence of Payment of Capital Costs.* Many who commented interpreted the proposed direction in § 33.42(a) as requiring cabin owners to provide evidence that either the cabin owner or a predecessor of a cabin owner directly paid, paid a lump sum fee, or paid a surcharge for the capital costs of an inventoried utility, access, or facility. Many cited that it is the intent of section 606(a)(1) of CUFFA that it is the responsibility of the Forest Service to provide this evidence.

The Forest Service agrees. Major revisions to this section have been made to more clearly articulate that intent. The caption for § 33.42(a) has been revised to ''Types of Utilities, Access, and Facilities to Include in Inventories,'' and includes the list of itemized types of utilities, access, and facilities that were identified in the proposed direction under the general caption in § 33.42 as items 1 thru 4. The caption at § 33.42(b) has been revised to ''Criteria to be Considered in Determining Who Paid for Inventoried Utilities, Access, and Facilities,'' and revises the direction previously contained in §§ 33.42(a) and (b) to provide greater clarity to Forest Service employees and cabin owners concerning criteria for determining who paid for capital improvements and to clearly identify the burden of the Forest Service to produce evidence that capital improvements were paid by a party other than the cabin owner or their predecessor.

However, the Forest Service disagrees with those respondents who commented that CUFFA directs the Forest Service to ''prove'' that capital costs for access, utilities, and facilities were paid for by the Forest Service or a third party. That is a standard much higher than the clear language in CUFFA which simply requires the authorized officer to have evidence of the payment of capital costs by either the Forest Service or a third party.

2. *Hook-up or Tap Fee.* The proposed direction in § 33.42(a) stated that a hook-up fee or tap fee, which is commonly assessed by a utility provider when initiating service to a new customer, does not equate to payment of the capital costs of installment of the facilities that deliver or transport the utility service to the tract or lot being appraised. Many of the comments received disputed this statement, asserting that a hook-up or tap fees are an expense to the cabin owner and, therefore, are assessed by the provider to pay for the capital costs to construct and install the improvements or facilities which deliver the utility or service.

The Forest Service agrees that there may be cases where at least some of the hook-up or tap fee assessment is based upon the provider's capital costs to install the utility or facility that provides that service. Therefore, the direction has been revised in § 33.42(b) to instruct authorized officers that if evidence is produced to indicate that hook-up or tap fee assessments were implemented to pay for the capital costs to construct and install the improvements or facilities which deliver the utility or service, then that will serve as the basis for the authorized officer to determine that the cabin owner or their predecessor who paid a fee have paid for the capital costs of the utility or facility providing service to the lot. In most cases, however, the amount of the hook-up or tap fee assessed to a new customer is established primarily to pay for the utility provider's administrative costs incurred as part of activating a new customer, such as the establishment of a new file and account and expenses of a site visit to enable switches and install metering units owned and operated by the provider. In these instances, the hook-up or tap fee will not be considered payment by the cabin owner or their predecessor for the capital costs of facilities. The final direction has been revised to reflect the fact that it is the responsibility of the authorized officer to seek evidence to make that determination.

3. *Base User Fees.* Many comments disputed the proposed direction that provided that if the capital costs of a utility or facility are paid for and attributable to the entire service base, then those capital costs are assumed to be neighborhood enhancing developments and the costs being borne by the provider of a service or utility, not the cabin owner or their predecessor. These comments suggest that in effect, all customers who are assessed a base rate and/or user fee for services provided by a utility company or service provider, such as an electric company, telephone company, water

utility district, cable TV provider, and so forth are paying for the capital costs of utilities and facilities that provide those types of utility or service to a recreation residence lot. The logic of these comments would suggest that any cabin owner who is paying base rates and user fees for a utility service is paying capital costs to construct, operate, and maintain the facilities that provide or deliver that utility or service, even when those base rates and user fees are nothing more than that being assessed to every other customer in the service area.

The Forest Service disagrees with these arguments. Applying the logic of these comments would mean that only in the rarest of cases would there ever be a utility or facility that is providing service to a recreation residence lot that would be considered as having been provided by a third party, such as a utility or service company provider. If that had been the intent of the Congress in drafting this provision of CUFFA, then there would have been little purpose served to direct that the agency inventory and identify utilities provided by a third party. Rather, the Forest Service has interpreted CUFFA to mean that there clearly are circumstances in which utilities, access, and facilities can be identifiable as having been provided by a third party, and most commonly by the utility or service provider, without the customer directly incurring the capital costs of utilities, access, or facilities. It is the Forest Service's interpretation of section 606(a)(1) of CUFFA that if the capital costs of any utility, access, or facility were not directly paid by the cabin owner or their predecessor, then costs will be identified as having been paid for by a third party. The payment of a base rate and usage fee is not equivalent to direct payment of the capital costs of utility, access, or facilities delivering or providing a utility or service.

4. *Tax Supported Roads and Highways.* Similar to the issue raised in preceding paragraph 3, many respondents asserted that in those cases where a tract or lot is accessed by a Federal, State, or county highway or road, and where the cabin owner is paying a possessory interest tax to the State or county governmental entity who operates and maintains that road or highway, is proof that the cabin owner is paying for the capital costs of the highway or road through that tax.

The Forest Service disagrees. The only evidence demonstrating that the cabin owner or a predecessor of the cabin owner paid the capital costs for a road or highway would be evidence that a public road agency assessed a surcharge or lump sum assessment to the cabin owner or their predecessor, or a specific road or highway accessing their recreation residence.

Almost all who responded to this section of the proposed direction commented that simply making statements in agency direction does not equate to providing evidence that the capital costs of inventoried utilities, access, and facilities were or were not provided or paid for by the cabin owners or their predecessors, and that CUFFA requires evidence. The Forest Service agrees with those comments, but in doing so, the agency also wants to clarify that it is not the intent to have statements in agency direction satisfy the evidence requirements of CUFFA. Rather, as previously stated, the provisions in §§ 33.42(a) and (b) of the direction were designed to provide internal agency guidance to Forest Service special use permit administrators and authorized officers for their use in conducting inventories and in making a determination as to who paid for utilities, access, and facilities providing services to a lot. Some of those provisions describe circumstances which the agency will consider as being prima facie evidence for use by an authorized officer in determining who paid for the capital costs of certain access, utilities, and facilities.

The final direction has been revised to more clearly articulate this purpose.

33.7—Holder Notification of Accepted Appraisal Report and Right of Second Appraisal. This section directed the authorized officer to notify the affected holders when the Forest Service has accepted an appraisal report and has determined a new base fee based on that appraisal report.

Comment. A respondent suggested that the authorized officer should be required to provide the holders with written justification for his/her decision for accepting an appraisal report.

Response. The authorized officer, as stated in section 33.6, may accept the estimated value of the typical lot or lots in the appraisal for establishing a new base fee for that recreation residence lot or lots. The justification for the decision is that the assigned review appraiser has determined that the appraisal meets the required standards and the value estimate is supported and approved. By law, the authorized officer is required to calculate cabin user fees that reflect the market value of a lot, including regional and local economic influences. Market value incorporates those economic influences. It would be redundant for the authorized officer to say his/her justification for the decision (determining a new base fee) is because he/she complied with law.

There were no changes made to this section in the final directive.

33.71b—Appraisal Guidelines. This section of the proposed direction addressed the manner in which second appraisals may be conducted.

Comment. One appraisal organization suggested wording to clarify the intent of this section and to demonstrate why the recommended procedure does not present an ethical conflict in the context of the Uniform Standards of Professional Appraisal Practice (USPAP).

Response. The Forest Service agrees. Section 33.71b has been rewritten to more clearly articulate its purpose and explain how the procedure is in conformance with USPAP.

33.72—Reconsideration of Recreation Residence Fee. This section provided direction for reconsidering a recreation residence base fee following the authorized officer's receipt of reconsideration based on the results of a second appraisal.

Comment. Many comments were received regarding the fact that this section of the proposed direction failed to provide guidance to the authorized officer on how a final base fee will be established in cases where a second appraisal might be materially different from the first appraisal. Respondents suggested that it may not be appropriate to, as the proposed direction stated, establish a base fee from within the range of values established by the first and second appraisals, particularly if one of the appraisals was poorly done. For the same reason, many who commented were concerned that this provision in the proposed direction might lead authorized officers to simply average the first and second appraisals, to arrive at an average between the two in establishing a new base fee, a practice which might also be inappropriate if one or both of the two appraisals were poorly done.

Response. The language in this section of the proposed direction is nearly verbatim to the language provided in section 610(d) of CUFFA concerning the establishment of a new base fee pursuant to the results of a first and second appraisal. The comments suggest that the Forest Service direction restrict or qualify the manner in which the authorized officer may exercise discretion to establish a new base fee in an amount that is equal to the base fee established by the initial or the second appraisal, or is within the range of values, if any, between the initial and second appraisals. The Forest Service disagrees. The agency believes that this

discretion is necessary, and yet is adequately prescriptive to assure an acceptable degree of consistency by authorized officers in exercising it on a case specific basis.

Regarding comments concerning the inappropriateness of the use of appraisals that are ''poorly done,'' the Forest Service notes that any appraisal that is presented to an authorized officer for consideration in the establishment of a cabin user fee must, pursuant to agency direction, first be reviewed by a Forest Service Qualified Review Appraiser. The Qualified Review Appraiser determines whether the appraisal has been conducted, and the appraisal report has been prepared, in a manner consistent with Federal and agency standards, and in the case of recreation residence lot appraisals, consistent with the appraisal guidelines for recreation residence lots in existence at the time that the appraisal was conducted. Only when a Forest Service Qualified Review Appraiser conducts a review and makes a determination that the appraisal is acceptable for agency use, is it declared acceptable for use in determining a recreation residence fee. The same review standards will be applied to any second appraisal. Therefore, if the term ''poorly done'' equates to not having met established Federal and agency standards and specifications for conducting appraisals and writing appraisal reports, then it is likely that the appraisal would never be approved for agency use and would, therefore, not be used by the authorized officer as either a first appraisal or a second appraisal in establishing a cabin user fee.

3*3.8—Establishing a Recreation Residence Lot Value During the Transition Period of the Cabin User Fee Fairness Act.* This section of the proposed direction addressed the manner in which a base cabin user fee would be established upon adoption of the final regulations, policies, and appraisal guidelines pursuant to CUFFA. It identified that one of three options to be used in establishing a base cabin user fee during the transition period: (1) Conduct a new appraisal pursuant to these final regulations, policies, and appraisal guidelines; (2) Commission a peer review of an existing appraisal that had been completed after September 30, 1995; or (3) Establish a new base fee using the market value of the typical lot that has been identified in an existing appraisal that was completed and approved after September 30, 1995.

Comment. Some who responded to this section of the proposed direction suggested that permit holders should also be provided with a fourth option, one that would give the holders an opportunity, after the completion of either a new appraisal (option 1) or a peer review (option 2), to request a second appraisal, in accordance with the provisions for second appraisals as described in § 33.7.

Response. The Forest Service disagrees with those who interpreted CUFFA in this manner. The three options identified in section 33.8 of the proposed direction were intended to reflect the provisions of section 614 of CUFFA, which clearly provides that during the transition period, these are the only three means by which a new base cabin user fee may be established for permits for those lots which were appraised on or after September 30, 1995, but before October 11, 2000 (the date of enactment of CUFFA). Typical lots representing almost every recreation residence lot in the entire National Forest System were appraised between these two dates. The only part of section 614 of CUFFA that provides holders with the opportunity to seek a second appraisal is found in section 614(b)(1)(B), where it speaks to the right of a cabin owner to a second appraisal under section 610 of CUFFA. Section 610, however, only applies to lots which, at the time of enactment of CUFFA, had not been appraised after September 30, 1995. As stated above, typical lots representing almost every recreation residence lot in all of the National Forest System had been appraised between September 30, 1995 and the date of enactment of CUFFA (October 11, 2000). Section 610 of CUFFA, which provides for the right of a second appraisal, is interpreted by the Forest Service to apply to those lots which were not appraised between September 30, 1995 and October 11, 2000, but instead may have been appraised since October 11, 2000. There are only rare instances in which this has occurred. The provisions of section 610 of CUFFA, and as expanded upon in section 33.7 of the final policy direction concerning the right of a permit holder to a second appraisal will, of course, also apply to any and all appraisals of typical lots in the next regularly scheduled appraisal cycle, which will begin as early as 2006. The right of a second appraisal will not apply to the establishment of a new base cabin user fee during the transition period, as that period is defined in section 614 of CUFFA and in § 33.8 of the final policy direction.

The direction in § 33.8 has been revised in the final directive to make it clear that the options described in paragraphs 1 through 3, and explained in further detail in § 33.81 through 33.83, are the only means by which a new base cabin user fee is established during the transition period for those lots which were appraised between September 30, 1995 and October 11, 2000. Holders who request a new appraisal or the commissioning of a peer review will not have the right to request a second appraisal as provided for in section 33.7.

33.83—Requests for Peer Review Conducted Under Regulations. This section of the proposed direction addressed the manner in which peer reviews may be requested, conducted, and used.

Comment. One appraisal organization requested that the Department provide immunity or indemnification for its role in facilitating a peer review.

Response. The Forest Service consulted with the Office of the General Counsel and was advised that the government has no authority to provide either immunity or indemnification to the appraisal organization as requested. The Forest Service and Office of the General Counsel consulted with the appraisal organization staff and counsel to discuss alternatives the organization could take absent government immunity or indemnification. The appraisal organization agreed to pursue alternative means to address concerns about potential liability of its members.

There were no changes made to this section in the final directive.

Comment. Two appraisal organizations suggested wording to clarify the type of review intended in section 33.83.

Response. The Forest Service agrees. Section 33.83 will be rewritten to more clearly articulate its purpose and identify the type of review contemplated in conformance with Uniform Standards of Professional Appraisal Practice (USPAP).

Comment. Some who responded to this section of the proposed direction suggested that one of the products of a peer review is to recommend that the appraisal being reviewed is so seriously flawed that it be discarded for use.

Response. The Forest Service disagrees with these comments. Paragraphs ''a'' and ''b'' in section 33.83 of the proposed direction identified actions that will be taken, or could be taken, as a result of the findings of a peer review. They identified that when a peer review results in a finding that the appraisal being reviewed was not conducted in a manner consistent with the regulations, policies, and appraisal guidelines, the authorized officer shall either establish a new base fee that reflects consistency with CUFFA

regulations, policies, and appraisal guidelines, or provide the opportunity for the holders to request a new appraisal, in accordance with the provisions of CUFFA and these regulations, policies, and appraisal guidelines. If a new appraisal is requested and conducted, it would replace the existing appraisal and be used as the basis for establishing a new base cabin user fee. The Forest Service believes that these provisions in the proposed direction are consistent with the provisions for conducting and utilizing a peer review identified in section 614(c)(4) of CUFFA.

Comment. Some respondents suggested that one of the purposes or outcomes of the peer review should be to allow peers to recommend that the appraisal being reviewed be thrown out as just an incompetent appraisal. The provisions at § 33.83 don't provide for that, and instead identify that the results of the peer review are only to determine whether the appraisal was conducted in a manner consistent with regulations, policies, or the appraisal guidelines being adopted pursuant to CUFFA.

Response. The two situations described above are not in conflict. If a peer review results in a determination that the appraisal was not conducted in a manner consistent with the regulations, policies, and appraisal guidelines pursuant to CUFFA, the authorized officer shall either establish a new base fee to reflect consistency with the regulations, policies, and appraisal guidelines or conduct a new appraisal. Either of these options has the practical effect of ''throwing out'' the original appraisal because it is no longer the basis for the fee determination.

Comment. Many comments were received concerning those provisions which outlined the manner in which a peer review will be conducted, and that it will be based upon the membership in a professional appraisal organization of the appraiser who conducted the appraisal being reviewed. The direction went on to identify criteria for identifying the assignment of an appraiser to conduct the peer review and whether the appraiser who conducted the appraisal being reviewed was or was not a member of one or more appraisal sponsor organizations of The Appraisal Foundation. Those who commented on these criteria said that this constitutes a bias in favor of The Appraisal Foundation, and that given the history of the role of The Appraisal Foundation in the creation of CUFFA, there is no reason in preferring The Appraisal Foundation over any other appraisal organization.

Response. The Appraisal Foundation has no individual appraiser members, only sponsor organization members. Therefore, no appraisal may be referred to TAF for peer review.

There were no revisions made to this section.

Forest Service Handbook 5409.12—Appraisal Handbook

Chapter 60—Appraisal Contracting

Section 66, Exhibit 03—Required Specifications for Appraisal of Recreation Residence. This section containing exhibits 06 and 07 was coded in a single digit coding scheme when published for notice and comment. The section is now coded in a two digit coding scheme (sec. 66) to conform it to the other sections in FSH 5409.12, chapter 60, which were revised on February 23, 2005. The exhibits for recreation residences are now enumerated as exhibit 03 (previously exhibit 06) and exhibit 04 (previously exhibit 07) respectively.

This section contained the technical appraisal provisions and guidelines enumerated in section 606 of CUFFA. More than 1,500 comments were received addressing various provisions of the proposed appraisal specifications. Approximately 400 comments addressing specific sections of exhibit 06 were submitted via a fill-in-the-blank standard form. Each of those issues raised on the standard form are addressed in the order in which the subject of those comments appears in the appraisal specifications in exhibit 06.

General Comment on Exhibit 03

Comment. There are inconsistencies in definitions and the use of language throughout the specifications, and they will invite problems in the future. The language should mirror CUFFA and there should be no repetitions.

Response. The specifications were developed to incorporate direction found in CUFFA and mirror the language found there. However, there are areas where either CUFFA was silent on a particular aspect of the appraisal process or additional clarification and direction were necessary. These specifications were developed to be as clear and concise as possible, yet provide consistent guidance for appraisers preparing recreation residence lot appraisals. If the purpose of agency rule making and developing agency direction and guidelines were to simply repeat statutory language, then it would serve no purpose at all. Doing so would only establish unclear and ambiguous rules, policies, and guidelines, adding confusion and frustration to the appraisal process. Therefore, where some of the language in CUFFA may be subject to varying interpretations or applications, the department's rules and the agency's directives and guidelines serve to further refine and define that language as needed to preclude inconsistency in exercising CUFFA's direction and authority.

Section C–2.1(e) of Section 66, Exhibit 03. This section required that upon request by the government, during the 2-year period following the date of the appraisal report, the Contractor will update the value as of a specified date.

Comment. Those who commented suggested that the value of the typical lot being appraised should be as of the date of the inspection of that typical lot and it should not change for 2 years. The comments suggested that CUFFA does not provide for this.

Response. CUFFA is silent regarding the need for an update within a specified period of time. Generally, the date of value will remain constant. However, there may be a need to retain this option to accommodate unforeseen circumstances. For example, if there is severe timber blow down, fire, or flood, it may be necessary to reappraise the typical lot affected by the natural disaster to recalculate the fee if a decision is made to reauthorize the permit. If this occurs, the date of value may change to reflect the negative impact of the natural disaster upon the permitted lot.

There were no changes made to this section.

Section C–2.1(g) of Section 66, Exhibit 03. This section references appropriate places to find the definitions of terms.

Comment. Those who commented on this section suggested that the language in CUFFA should be included here, as an additional reference for definitions.

Response. The Forest Service agrees. Section C–2.1(g) will be modified to read, ''Unless specifically defined herein or in CUFFA Section 604, USPAP, or UASFLA, definitions of all terms are the same as those found in ''The Dictionary of Real Estate Appraisal'' (Appraisal Institute), current edition. UASFLA shall take precedence in any differences among definitions.''

Section C–2.2(b)(1) of Section 66, Exhibit 03. Item #7 in this section contained the language ''the adoption of an uninstructed assumption or hypothetical condition that results in other than 'as is' market value will invalidate the appraisal.''

Comment. This language is unnecessary because the appropriate prohibitions are already part of the

appraisal requirements in USPAP and this statement does nothing other than confuse the appraiser.

Response. The Forest Service disagrees. USPAP allows the appraiser the latitude to incorporate extraordinary assumptions and/or hypothetical conditions into the report, as long as it does not produce a misleading result. This is a different scenario than an ''as is'' market value. Most recreation residence lots cannot be valued in an ''as is'' state because of permit holder provided improvements made to the lot and direction provided in CUFFA.

There were no changes made to this section.

Section C–2.2(b)(2)(3)(b) of Section 66, Exhibit 03. This section referenced a ''Neighborhood Map.''

Comment. Use of the term ''neighborhood'' should be avoided, and in its place, the term ''tract'' should be used. Use of the term ''neighborhood'' leaves the impression that recreation residence tracts are subdivisions, which perpetuates errors in the selection of comparable sales. This would be inconsistent with section 606(b)(1)(B)(ii) of CUFFA, which specifically states that a ''* * * typical lot will not usually be equivalent to a legally subdivided lot.''

Response. The Forest Service partially agrees. The ''neighborhood map'' is intended to depict the tract and the surrounding area in order to provide the user of the appraisal report with perspective of the property around the recreation residence tract, including major geographic features, proximity to other uses, water features, access, and general services. Use of the term ''tract'' would limit this over-view of the area to only the tract, and would not provide a ''picture'' of the surrounding area. The term ''neighborhood'' has generally been replaced by ''market area'' which is defined in ''The Dictionary of Real Estate Appraisal,'' current edition, as ''the geographic or locational delineation of the market for a specific category of real estate, i.e., the area in which alternative, similar properties effectively compete with the subject property in the minds of probable, potential purchasers and users.'' References to ''neighborhood'' will be replaced by ''market area.''

Section C–2.2(b)(2)(4)(a) of Section 66, Exhibit 03. This section referred to timber and commercial value for mineral deposits in appraisals.

Comment. CUFFA does not allow the Forest Service to establish a cabin user fee based upon the value of the timber and minerals on a recreation residence lot. The inclusion of these factors will likely lead to confusion among appraisers. This section should reference ''timber'' as ''trees,'' and should eliminate all reference to mineral values.

Response. The Forest Service disagrees. Timber, minerals, and other resources are elements of value that have potential to impact the value concluded for an appraised property. The Forest Service appraisal guidelines confine the highest and best use analysis to use as a recreation site. The above-referenced property characteristics can only be reflected in the value opinion as they contribute to the property's highest and best use; a lot suitable for use as a recreation residence site.

There were no changes made to this section of exhibit 03.

Section C–2.2(b)(2)(4)(e) of Section 66, Exhibit 03. This section required the appraiser to cite a ten-year record of the sales of the appraised property.

Comment. This is directly contrary to the terms of CUFFA and will mislead appraisers. The sale of the cabin on the typical lot is not the same as the market value of the typical lot, and should not be used in establishing the appraised value of a typical lot. It has no bearing on determining the appraised value of a recreation residence lot.

Response. The cited section specifically states, ''include a ten-year record of all sales of the appraised property * * *''. The appraised property is the lot owned by the United States. The ''actual cabin'' is not owned by the United States and is not the subject of the appraisal. The appraiser is not required to cite the sale of the ''actual cabin.''

There were no changes made to this section of exhibit 03.

Section C–2.2(b)(2)(4)(f) of Section 66, Exhibit 03. This section referred to the highest and best use of the lot.

Comment. Highest and best use should not be addressed in this part of the appraisal specifications. A subsequent definition of ''highest and best use'' correctly defines it as a recreation residence use, so why have it in this part of the specifications.

Response. Section C–2.2(b)(2)(4)(f) discusses ''Zoning and Other Land-Use Restrictions.'' It is important to provide instruction to the appraiser indicating how these restrictions are to be considered, in order to ensure consistency. The Analysis of Highest and Best Use section follows immediately below the cited section and properly restricts the appraiser's consideration of highest and best use to the appraised property's suitability use as a recreation residence lot.

There were no changes made to this section of exhibit 03.

4. Regulatory Certifications

Environmental Impact

These directives revise the administrative procedures for determining market value for recreation residences on National Forest System lands. Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that these final directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

These final directives have been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. OMB has determined that this is not a significant action. The final directives would not have an annual effect of $100 million or more on the economy, or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. The final directives would not interfere with an action taken or planned by another agency, or raise new legal or direction issues. Finally, these final directives would not alter the budgetary impacts of entitlements, grants, or loan programs or the rights and obligations of recipients of these programs.

No Takings Implications

These final directives have been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the final directives do not pose the risk of a taking of protected private property.

Civil Justice Reform

These final directives have been reviewed under Executive Order 12988, ''Civil Justice Reform''. After adoption of these final directives, (a) all State and local laws and regulations that conflict with these final directives or that would impede full implementation will be preempted; (2) no retroactive effect would be given to these final directives; and (3) the Department will not require the use of administrative proceedings before parties may file suit in court challenging their provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of these final directives on State, local, and tribal governments and the private sector. These final directives would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered these final directives under the requirements of Executive Order 13132 on federalism, and has made an assessment that the final directives conform with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, these final directives do not have tribal implications as defined by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'', and, therefore, advance consultation with tribes is not required.

Energy Effects

These final directives have been reviewed under Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply.'' It has been determined that these final directives do not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

The information collection associated with the permitting and administration of recreation residences are covered under the approved Office of Management and Budget (OMB) control number 0596–0082. However, as provided by Section 614 of the Cabin User Fee Fairness Act of 2000 ((CUFFA) 16 U.S.C. 6210–13) the final directive does contain a new one-time information collection requirement in FSH 2709.11, §§ 33.8 through 33.83. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do apply. Approval of this information collection requirement has been submitted for approval to the OMB. The agency expects the new information collection requirement required by CUFFA to be approved by OMB prior to implementation of the provisions in sections 33.8–33.83.

Dated: January 4, 2006.

Dale N. Bosworth,

Chief.

5. Text of Final Directives

Note: The Forest Service organizes its Directive System by alphanumeric codes and subject headings. Only those sections of the Forest Service Manual and Handbook that are the subject of this notice are set out here. The intended audience for this direction is Forest Service employees charged with issuing and administering recreation residence special use authorizations.

Forest Service Manual

Chapter 2340—Privately Provided Recreation Opportunities

2340.5—Definitions.

* * * * *

Caretaker Cabin. A residence that is authorized in limited cases to provide caretaker services and security to a recreation residence tract.

* * * * *

2347.1—Recreation Residences. (For further direction, see FSM 2721.23 and FSH 2709.11.) Recreation residences are a valid use of National Forest System lands. They provide a unique recreation experience to a large number of owners of recreation residences, their families, and guests. To the maximum extent practicable, the recreation residence program shall be managed to preserve the opportunity it provides for individual and family-oriented recreation. It is Forest Service direction to continue recreation residence use and to work in partnership with holders of these permits to maximize the recreational benefits of recreation residences.

* * * * *

7. Authorize community- or association-owned and maintained improvements under a separate permit and authority appropriate for that use (see FSH 2709.11, sec. 33.05, definition of ''related improvements'' and FSM 2721.23c, para. 3.)

* * * * *

2347.12—Caretaker Cabins.

2347.12a—Permits.

1. Authorize caretaker cabin use of a recreation residence lot with an annual permit, Form FS–2700–4, under the Organic Act (16 U.S.C. 551). Require applicants who have a recreation residence permit (Form FS–2700–5a) to relinquish that permit as a condition of qualifying for a caretaker cabin permit. A caretaker cabin may be owned by a tract association, and the permit may be issued in the name of the head of that association.

2. Coordinate applications for caretaker cabin permits with local governmental agencies to avoid creating unreasonable demands for public services such as snow plowing, mail delivery, garbage pickup, school bus services, or emergency services.

3. If a recreation residence ceases to be used as a caretaker cabin, the holder of the caretaker cabin permit may apply for and, if qualified, be issued a recreation residence permit.

2347.12b—Caretaker Cabin Use. The need for a caretaker cabin can rarely be justified where yearlong occupancy is already authorized in the tract. The Forest Supervisor may authorize a caretaker cabin in limited cases where it is demonstrated that caretaker services are needed for the security of a recreation residence tract and alternative security measures are not feasible or reasonably available. The base cabin user fee for a caretaker cabin permit shall not exceed the base cabin user fee charged for the use of the lot as a recreation residence. That fee shall be determined as follows:

1. The base cabin user fee for a caretaker cabin located in a recreation residence tract shall not exceed the base cabin user fee for a similar typical lot in that tract (see FSH 2709.11, section 30.05, for definitions of ''base cabin user fee'' and ''typical lot'').

2. When a caretaker cabin is not located in a recreation residence tract, the base cabin user fee for the caretaker cabin shall not exceed the base cabin user fee for a similar typical lot in the recreation residence tract being monitored by the caretaker cabin permit holder (see FSH 2709.11, section 30.05, for definitions of ''base cabin user fee'' and ''typical lot'').

* * * * *

Chapter 2720—Special Uses Administration

* * * * *

2721.23—Recreation Residences.

* * * * *

2721.23d—Fee Determination.

1. Use market value as determined by appraisal in determining the base annual fees for recreation residence lots. Determine a new base fee at 10-year intervals.

Forest Service Handbook (FSH)
2709.11—Special Uses Handbook

Chapter 30—Fee Determination

* * * * *

33—Recreation Residence Lot Fees. Recreation residence lot fees shall be assessed and paid annually.

33.05—Definitions.

Cabin. A privately built and owned recreation residence that is authorized to use and occupy National Forest System land.

Majority. More than 50 percent.

Market Value. 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 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.

Natural, Native State. The condition of a lot or site, free of any improvements, at the time at which the lot or site was first authorized for recreation residence use by the Forest Service.

Recreation Residence. A privately owned, noncommercial residence located upon National Forest System lands and authorized by a recreation residence term special use permit. A recreation residence is maintained by the permit holder for personal, family, and guest use and enjoyment. A recreation residence shall not serve as a permanent residence.

Recreation residence lot. (For this definition, see 36 CFR 251.51.)

Related Improvements.

a. For the purpose of defining a recreation residence lot (36 CFR 251.51), ''related improvements'' include not only the examples of facilities and uses owned and maintained by the holder identified at 36 CFR 251.51, but may also include, but are not limited to, the following holder owned facilities or uses of National Forest System lands being actively operated and maintained by the holder in conjunction with the recreation residence use:

(1) Outbuildings;
(2) Wood piles;
(3) Retaining walls;
(4) Picnic tables;
(5) Driveways and parking areas;
(6) Trails and boardwalks;
(7) Campfire rings, seats, and benches.
(8) Lawns, gardens, flower beds, and landscaped terraces;
(9) Manipulated native vegetation, except as provided for in paragraph b(1).

b. Related improvements do not include:

(1) Native vegetation that is manipulated for the primary purpose of protecting property and mitigating safety concerns, such as the removal of hazard trees, and the treatment/management of vegetation, approved by the authorized officer, to reduce fuel loading and to create defensible space for wildfire suppression purposes.

(2) Tract association- or community-owned improvements or uses, such as boat docks, swimming areas, and water or sewer systems that are under a separate authorization issued in the name of a tract association or other entity representing the owners of the recreation residences.

Term Permit. (For this definition, see 36 CFR 251.51 and FSM 2705.)

Tract. An established location within a National Forest containing one or more cabins authorized in accordance with the recreation residence program.

Typical Lot. A recreation residence lot in a tract that is selected for appraisal purposes as being representative of value characteristics similar to other recreation residence lots within the tract. All recreation residence lots represented by a typical lot shall be characterized as a group for appraisal purposes. A tract may have one or more groups of lots, with each group represented by a typical lot. A typical lot may be the only recreation residence lot in a group, and may be appraised to represent only itself, when it has unique value characteristics unlike any other recreation residence lot in a tract.

Urban. A mature neighborhood with a concentration of population typically found within city limits or a neighborhood commonly identified with a city (The Dictionary of Real Estate Appraisal, Fourth Edition).

33.1—Base Fees and Annual Adjustments.

33.11—Establishing New Base Fee.

1. *Base Fee.* The base fee for a recreation residence special use permit shall be equal to 5 percent of the market value of the recreation residence lot as determined by appraisal. The base fee shall be recalculated at least once every 10 years.

2. *Notification of New Base Fee.* The authorized officer shall notify the holder in writing at least one (1) year in advance of implementation that a new base fee has been determined by appraisal conducted in accordance with procedures contained in section 33.4 of this Handbook. If a second appraisal, secured by the holder (sec. 33.7) and approved by the agency, prompts the authorized officer to reconsider the new base fee amount, the revision to the base fee may be implemented at any time after the end of the one-year period following the initial notification.

3. *Effective Date of New Base Fee.* The date of a billing for payment of a new base fee, or the date of a billing for the first payment of a phase-in amount (sec. 33.12) of a new base fee, shall constitute the date of implementation of the new base fee.

33.12—Phase-in of Base Fee. Require the holder to pay the full amount of a new base fee if that new base fee results in an increase of 100 percent or less from the amount of the most recent annual fee assessed the holder.

When the new base fee is greater than a 100 percent increase from the amount of the most recent annual fee assessed the holder, implement the new base fee increase in three (3) equal increments over a 3-year period. Annual adjustments (sec. 33.13) shall be included in the calculation of fees that are incrementally phased-in over the 3-year period. Exhibit 01 illustrates the manner in which a new base fee would be phased-in when the new base fee results in an increase of more than 100 percent from the most recent annual fee assessed the holder.

33.12—Exhibit 01.

PHASE-IN WHEN NEW BASE FEE RESULTS IN AN INCREASE OF MORE THAN 100 PERCENT FROM THE MOST RECENT ANNUAL FEE ASSESSED THE HOLDER

2007 Fee amount	2008 New base fee	Increase
$700	$1,600	$900 (>100% increase).

2008 Phase-in Fee: $700 (2007 fee) + $300 (⅓ of fee increase >100%) = $1,000.

2004 Phase-in Fee: $1,000 (2008 fee) + $300 (⅓ of fee increase >100%) × 1.03* (annual IPD–GNP increase of 3%) = $1,339.

2010 Phase-in Fee: $1,339 (2009 fee) + $300 (⅓ of fee increase >100%) × 1.03* (annual IPD–GNP increase of 3%) = $1,688.
2011 Phase-in Fee: $1,688 (2010 fee) × 1.03* (annual IPD–GNP increase of 3%) = $1,739.

* 3% annual IPD–GNP adjustment is used for illustrative purposes only. The actual annual IPD–GNP rate would be used for each of the phase-in amounts in years 2009 through 2011.

33.13—Annual Adjustment of Recreation Residence Fee. Recreation residence fees shall be adjusted annually using the 2nd quarter to 2nd quarter change in the Implicit Price Deflator, Gross National Product (IPD–GNP).

An annual adjustment to the base fee shall be no more than 5 percent in any single year. When the annual change to the IPD–GNP results in an annual adjustment of more than 5 percent, apply the amount of the adjustment in excess of 5 percent to the annual fee payment for the next year in which the change in the index factor is less than 5 percent. Exhibit 01 provides two examples on how annual fees are adjusted in years during which the annual change in the IPD–GNP index exceeds 5 percent.

33.13—Exhibit 01.

PHASE-IN OF FEES WHEN INCREASE EXCEEDS 5 PERCENT IN A SINGLE YEAR

EXAMPLE 1—Only 1 year in which the IPD–GNP adjustment exceeds 5%:

2007 FEE = $700

2008 IPD–GNP adjustment = 7%*
($700 × .07 = $49)
Maximum adjustment/year = 5% ($35)
2008 carryover adjustment = 2% ($14)

2008 FEE = $700 (2004 FEE) × .05 (MAX. ADJ/YR.) = $735

2009 IPD–GNP adjustment = 3%*
Carryover adjustment from 2008 = $14

2009 FEE = $735 (2008 FEE) + $14 (2008 CARRYOVER) × 1.03 = $771

EXAMPLE 2—Multiple-year IPD–GNP adjustments exceeding 5%.

2007 FEE = $700

2008 IPD–GNP adjustment = 7%*
($700 × .07 = $49)
Maximum adjustment/year = 5% ($35)
2008 carryover adjustment = 2% ($14)

2008 FEE = $700 (2007 FEE) × 1.05 (MAX. ADJ/YR.) = $735

2009 IPD–GNP adjustment = 7%*
($735 × .07 = $51)
Maximum adjustment/year = 5% ($37)
2009 carryover adjustment = 2% ($14)
Total carryover (2008 & 2009) = $28

2009 FEE = $735 (2008 FEE) × 1.05 (MAX. ADJ/YR.) = $772

2010 IPD–GNP adjustment = 3%* (<max. adj/yr.)
Total 2009 & 2010 carryover = $28

2010 FEE = $772 (2009 FEE) + $28 (2008 & 2009 CARRYOVER) × 1.03 = $824

* Annual IPD–GNP adjustments used are for illustrative purposes only.

33.2—Fees When Determination Is Made To Place Recreation Residence on Tenure.

A recreation residence use is placed on ''tenure'' when the authorized officer notifies the holder of the officer's decision to discontinue the use of the lot for recreation residence purposes and to convert the use of the recreation residence lot to some alternative public purpose. When a decision is made to discontinue the recreation use, the authorized officer shall provide the holder a minimum of 10 years notice prior to the date of converting the use and occupancy to an alternative public purpose. If the holder's 20-year term special use permit expires during that 10-year period, a new annual special use permit shall be issued with an expiration date that coincides with the specified date for converting the recreation residence lot to an alternative public purpose.

When a recreation residence use has been put on tenure, the fee for the tenth year prior to the date of converting the recreation residence use to an alternative public use becomes the base fee for the remaining life of the use. The fee for each year during the last 10 years of the authorization shall be one-tenth of the base fee multiplied by the number of years remaining prior to the date of conversion. For example, charge a holder with 9 years remaining, 90 percent of the base fee; with 8 years, 80 percent; and so forth. Do not apply annual adjustments to fees when a recreation residence has been put on tenure notice. Exhibit 01 provides a schedule to calculate the holder's fee during the 10-year period.

33.2—Exhibit 01.

PHASE-IN OF FEES WHEN DETERMINATION IS MADE TO PLACE RECREATION RESIDENCE ON TENURE

Years remaining prior to date of conversion	Percent of base fee to charge
10	100

PHASE-IN OF FEES WHEN DETERMINATION IS MADE TO PLACE RECREATION RESIDENCE ON TENURE—Continued

Years remaining prior to date of conversion	Percent of base fee to charge
9	90
8	80
7	70
6	60
5	50
4	40
3	30
2	20
1	10

Use one of the following fee determination procedures when a review of a decision to convert the recreation residence lot to an alternative public use shows that changed conditions warrant continuation of the recreation residence use beyond the determined date of conversion:

1. If a new 20-year term permit is issued, recover the amount of fees forgone while the previous permit was under notice that the recreation residence lot would be converted to an alternative public purpose. Collect this amount evenly over a 10-year period in addition to the annual fee due under the new permit. The obligation runs with the recreation residence lot and shall be charged to any subsequent purchaser of the recreation residence. The annual fee under the newly issued 20-year permit shall be the annually-indexed fee computed as though no limit on tenure had existed, plus the amount as specified in this paragraph until paid in full.

2. Do not recover past fees when a 20-year term permit is not issued and the occupancy of the recreation residence lot will be authorized for less than 10 years past the originally identified date of conversion. Determine the fee for a new permit in these situations by computing the fee as if notice that a new permit would not be issued had not been given, reduced by the appropriate percentage for the number of years of the extension. For example, a new permit with a 6-year tenure period results in a fee equal to 60 percent of the base fee.

3. When a 20-year term permit is not issued, and the occupancy of the subject recreation residence lot will be allowed to continue for more than 10 years, but less than 20 years, recover fees as outlined in the preceding paragraph 1, computed for the most recent 10-year period in which the term of the permit was limited.

33.3—Fee When Recreation Residence Use Is Terminated or Revoked as Result of Acts of God or Other Catastrophic Events.

When the authorized officer determines that the recreation residence lot cannot be safely occupied because of an act of God or other catastrophic event, the fee obligation of the recreation residence owner shall terminate effective on the date of the occurrence of the act or event.

A prorated portion of the annual fee, reflecting the remainder of the current billing period from the date of the occurrence of the act or event, shall be refunded to the holder. In the event that the holder is authorized to occupy an in-lieu lot (sec. 41.23d), the refund amount may instead be credited to the annual fee identified in a new permit for the in-lieu lot.

33.4—Establishing the Market Value of Recreation Residence Lot.

The market value of a recreation residence lot shall be established by appraisal (FSH 5409.12, ch. 60).

1. Appraisals shall be conducted and prepared by a private contract appraiser who is licensed to practice in the State within which the recreation residence lot or lots to be appraised are located. Select private contract appraisers who have adequate training through professional appraisal organizations and who have satisfactorily completed the basic courses necessary to demonstrate competence for the appraisal assignment. Require appraisers to sign an Assignment Agreement (FSH 5409.12, sec. 66, ex.04). The appraisal must 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. 33.42).

Do not appraise individual recreation residence lots within a grouping or tract. Appraise the typical lot or lots that have been selected from within a group of recreation residence lots that all have essentially the same or similar value characteristics, pursuant to the direction in section 33.41. The authorized officer may make adjustments for measurable value differences among recreation residence lots within a grouping based upon the advice of the assigned Forest Service review appraiser.

2. The appraiser shall conduct and prepare the appraisal in compliance with:

a. The edition of the Uniform Standards of Professional Appraisal Practice (USPAP) in effect on the date of the appraisal;

b. The edition of the ''Uniform Appraisal Standards for Federal Land Acquisitions'' in effect on the date of the appraisal;

c. The appraisal sections for recreation residence lots found in the FSH 5409.12, section 66, exhibit 03; and

d. Any other case-specific appraisal guidelines provided to the appraiser by the Forest Service.

3. The appraiser shall ensure that appraised values are based on comparable market sales of sufficient quality and quantity. The appraiser shall recognize that the typical lot will not usually be equivalent to a legally subdivided lot.

The appraiser shall not select sales of land within developed urban areas, and in most circumstances, should not select a sale of comparable land that includes land that is encumbered by a conservation easement or recreational easement held by a government or institution. Sales of land encumbered by an easement may be used in situations in which the comparable sale is a single home site and is sufficiently comparable to the recreation residence lot or lots being appraised.

The appraiser shall also consider, and adjust as appropriate, the prices of comparable sales for typical value influences, which include, but are not limited to:

a. Differences in the locations of the parcels;

b. Accessibility, including limitations on access attributable to weather, the condition of roads and trails, restrictions imposed by the agency, and so forth;

c. The presence of marketable timber;

d. Limitations on, or the absence of services, such as law enforcement, fire control, road maintenance, or snow plowing;

e. The condition and regulatory compliance of any lot improvements, and

f. Any other typical value influences described in standard appraisal literature.

4. When an appraisal of the market value of a recreation residence lot in a tract is scheduled to occur, the authorized officer, or the authorized representative, and the appraiser shall, with a minimum 30-day written advance notice, arrange a meeting with the affected permit holders and provide them with information concerning the pending appraisal. At the meeting, holders shall be advised of the appraisal process, the method of appraisal, and

selection of typical lots. Permit holders shall be afforded the opportunity to meet the appraiser individually, or as a group, concerning the selection of a typical lot or lots.

5. The appraiser shall provide the recreation residence permit holders with a minimum 30-day advance written notice (certified mail, return receipt requested) of the date and approximate time of the recreation residence lot visit. Documentation of the notification shall be included in the addenda of the appraisal report. At the recreation residence lot meeting, permit holders shall be given the opportunity to provide the appraiser with factual or market information pertinent to the valuation of the typical lot or lots. This information must be submitted in writing and shall be accounted for in the appraisal report.

33.41—Selection and Appraisal of Typical Lot.

The appraiser shall appraise only the typical lot or lots selected within a tract. Before an appraisal is initiated, the authorized officer must make every effort to obtain the concurrence of the permit holders concerning the composition of the group or groupings of lots, which are essentially the same or which have similar economic value characteristics, and the selection of a typical lot or lots. A representative typical lot shall be identified as economically typical of the recreation residence lots in each group. Exercise care in identifying and selecting a typical lot that is economically competitive with all of the recreation residence lots within the group it represents. The selection process shall be documented in a permanent case file for the tract.

With the advice of the appraiser, the authorized officer shall determine the composition of the group or groupings of recreation residence lots and the selection of a typical lot or lots when concurrence with the holders cannot be achieved. The inability to obtain concurrence with the holders on selection of the group or grouping of recreation residence lots and the selection of a typical lot or lots shall be documented and included in the permanent case file for the tract.

When the inventory of facilities, utilities, and access servicing a tract (sec. 33.42) suggest that all lots within a grouping are not comparable to the typical lots representing that group with respect to the facilities, utilities, and access servicing the typical lot, the authorized officer may consider one of the following actions:

1. Establish a new grouping of lots having clearly different attributes of access, utilities, and facilities servicing those lots from those which have been inventoried and are servicing the typical lot, and (a) identify with the holders a new typical lot to represent that new grouping, (b) prepare a new permanent inventory of utilities, access and facilities servicing that typical lot (sec. 33.42), and (c) conduct a new appraisal of that typical lot pursuant to the provisions of CUFFA. The Forest Service and the holder(s) shall pay equally for the cost of the new appraisal;

2. Where feasible, assign lots having clearly different attributes to another typical lot established in the tract which has attributes of access, utilities, and facilities that are comparable to those lots.

3. Make adjustments to the base cabin user fee for those lots having utilities, access, and facilities that are so different from the attributes of the typical lot that it creates a measurable difference in value.

33.42—Inventorying Utilities, Access, and Facilities.

The authorized officer is responsible for identifying, documenting, and inventorying all utilities, access, and facilities that service each of the typical lots within a recreation residence tract and providing that information to the appraiser as part of the appraisal assignment.

The inventory must include the authorized officer's determination of who paid for the capital costs of those utilities, access, or facilities. In doing so, the authorized officer shall presume that the permit holder, or the holder's predecessor, paid for the capital costs of the utility, access, or facility serving the typical lot, unless the authorized officer can document that either the Forest Service or a third party paid for those capital costs.

33.42a—Types of Utilities, Access, and Facilities To Include in Inventories.

The types of utilities, access, and facilities that should be inventoried for each typical lot include, but are not limited to:

1. Potable water systems;

2. Roads, trails, air strips, boat docks, and water routes used to access the recreation residence lot or tract;

3. Waste disposal facilities; and

4. Utility lines, such as telephone lines, fiber optic cable, electrical lines, and cable TV.

33.42b—Criteria To Be Considered in Determining Who Paid for Capital Costs of Inventoried Utilities, Access, and Facilities.

It is the responsibility of the authorized officer to collect all available evidence to be considered in determining whether each inventoried utility, access, or utility was paid for by the cabin owner (or a predecessor of the cabin owner), a third party, or the Forest Service. In evaluating and considering the evidence, the authorized officer shall be guided by the following criteria and principles:

1. Consider the capital costs of an inventoried utility, access, or facility as having been paid by the cabin owner, or their predecessor, when:

a. There is evidence of direct payment of the costs of materials and installation by the cabin owner, or their predecessor;

b. There is evidence that the cabin owner or their predecessor was assessed and paid a lump sum fee by the road agency, or utility or service provider, for construction/installation of the inventoried facility;

c. There is evidence that the cabin owner or their predecessor was assessed and paid a temporary utility or tax surcharge, in addition to other taxes, or the base rates and usage fees assessed to all of the customers in the utility provider's rate base, as a means of paying the capital costs of the inventoried utility, access, or facility;

d. There is evidence that some or all of a hook-up or tap fee assessed to and paid by the cabin owner, or their predecessor, as a new customer of the utility or service provider, was established to include the recovery of capital costs to the utility or service provider for installation of the inventoried utility or facility;

e. There is insufficient evidence to support any of the circumstances described in the criteria identified under the following paragraphs 2 through 4.

2. Consider the capital costs of an inventoried utility, access, or facility as having been paid by a third party when there is evidence to conclude:

a. An entity, such as for-profit utility company (electric company, telephone company, cable television provider, etc.), a not-for-profit cooperative, a water or sewer district, a municipality, and so forth, installed a utility service or facility; that the corresponding service to the subject lot was provided without any lump sum or surcharge to base rates or usage fees assessed to the cabin owner or their predecessor; and that any hook-up fees or tap fees that may have been assessed to the cabin owner, or their predecessor, were not established with the intent to recover the utility company or provider's capital costs in the inventoried utility, access, or facility.

b. Roads providing access were built by a State, county or local road agency, and were paid for from the general tax

base or tax revenues used by that agency for road construction, without a specific lump sum charge or tax rate surcharge having been assessed to the cabin owners or their predecessors.

c. An inventoried road or trail providing access was built by a cooperator, pursuant to road or transportation cost-share agreement with the Forest Service.

3. Consider the capital costs of an inventoried utility, access, or facility as having been paid by the Forest Service when there is evidence to conclude:

a. Forest Service appropriations were expended to construct the inventoried utility, access, or facility road, trail, or facility that provides access and/or service to the recreation residence lot.

b. An inventoried road was indirectly paid by the Forest Service in the form of ''purchaser (road) credits'' pursuant to a timber sale contract.

4. Consider the capital costs of an inventoried utility, access, or facility as having been paid by either the Forest Service or a third party when there is evidence that it existed prior to the time when the recreation residence lot or lots within the tract was (were) first authorized for recreation residence use by the Forest Service.

33.5—Appraisal Specifications.

Direction pertaining to appraisal specifications is found in FSH 5409.12, section 65.3, Recreation Residence Lots, and section 66, exhibits 03 and 04.

33.6—Review and Acceptance of Appraisal Report.

The assigned Forest Service review appraiser shall review the appraisal report to ensure that it conforms to the Uniform Standards of Professional Appraisal Practice, the Uniform Appraisal Standards for Federal Land Acquisition, and appraisal guidelines found in the FSH 5409.12, chapter 60.

If the appraisal report meets the standards as described in this section, and as documented in an appraisal review report prepared by the assigned Forest Service review appraiser, the authorized officer may accept the estimated market value of the typical lot or lots in the appraisal report for establishing a new base fee for that recreation residence lot or lots.

33.7—Holder Notification of Accepted Appraisal Report and the Right of Second Appraisal.

The authorized officer shall notify the affected holder or holders that the Forest Service has accepted the appraisal report (sec. 33.6) and has determined a new base fee based on that appraisal report. Upon written request, the authorized officer shall:

1. Provide the holder with a copy of the appraisal report and supporting documentation associated with the typical lot upon which the holder's fee is based.

2. Advise the holder that the holder has 60 days after receipt of this notification to notify the authorized officer in writing of the holder's intent to obtain a second appraisal report.

3. Inform the holder that if a request for a second appraisal report is submitted, the holder has one year following receipt of the notice to prepare, at the holder's expense, a second appraisal report, for Forest Service review, of the typical lot on which the initial appraisal was conducted, using the same date of value as the original appraisal report.

33.71—Standards for Second Appraisal.

33.71a—Appraiser Qualifications.

The appraiser selected by the holder or holders to conduct a second appraisal must:

1. Meet the same general State certification requirements as the original appraiser;

2. Have experience in appraising vacant, recreational use lands;

3. Have the same or similar professional qualifications as the appraiser who prepared the first appraisal; and

4. Be approved in advance by the assigned Forest Service review appraiser.

33.71b—Appraisal Guidelines.

1. *Second Appraisal Assignment.* The second appraisal report shall use the appraisal guidelines used in the initial appraisal (FSH 5409.12, sec. 65.3, ex. 03), as prescribed in a pre-work meeting among the holder's appraiser, the Forest Service review appraiser, and the holder or holders, or their authorized representative. Prior to starting the second appraisal report, the appraiser shall sign an Assignment Agreement as provided in FSH 5409.12, section 65.3, exhibit 04. The appraiser shall submit the second appraisal report to the client. If the holder chooses to have the second appraisal report reviewed by the Forest Service, the holder must submit the appraisal report to the authorized officer requesting review by the assigned Forest Service review appraiser.

2. *Reporting of Material Differences.* Section 610(b)(4) of CUFFA requires the appraiser selected to conduct the second appraisal to ''* * * notify the Secretary of any material differences in fact or opinion between the initial appraisal conducted by the agency and the second appraisal.'' However, CUFFA does not require or mention any analysis, opinion, or recommendation concerning material differences of fact or opinion between the initial and second appraisal reports. The absence of analysis, opinion, or recommendation differentiates this document from an appraisal review report, or appraisal consulting report, as defined in the Uniform Standard of Professional Appraisal Practice (USPAP).

The assigned Forest Service review appraiser shall provide a copy of the initial appraisal report to the approved second appraiser with a request to notify the review appraiser of any material differences in fact or opinion between the initial appraisal report and the second appraisal report. After completion of the second appraisal report, and in a separate document, the appraiser shall submit in writing to the assigned Forest Service review appraiser his or her report of material differences of fact or opinion between the initial appraisal conducted for or by the agency and the second appraisal. The report shall be a brief statement or listing of any material differences of fact or opinion found in comparing the initial and second appraisal reports.

If the second appraiser comments in any way, such as on the quality, including the completeness, adequacy, relevance, appropriateness, reasonableness, of the other appraiser's work (any part of the appraisal report or work file), the second appraiser shall complete an appraisal review report in conformance with Standard 3 of USPAP.

3. *USPAP Compliance.* The Confidentiality section of USPAP's Ethics Rule states, in part that ''An appraiser must not disclose confidential information or assignments 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 law * * *'' However, disclosure of the first appraisal report to the second appraiser is required by CUFFA and in this situation is permitted by the Confidentiality section of USPAP's Ethics Rule. Therefore, the Jurisdictional Exception Rule does not apply to this situation because there is no conflict between this requirement in CUFFA and USPAP.

33.72—Reconsideration of Recreation Residence Base Fee.

The authorized officer shall inform the holder that they must submit to the authorized officer a request for reconsideration of the base fee within 60 days of the date of the second appraisal review report, if approved by the assigned Forest Service review appraiser.

Within 60 days of receipt of the request for reconsideration of the base fee, the authorized officer shall:

1. Review the initial appraisal report and appraisal review report.
2. Review the results of the second appraisal report and appraisal review report.
3. Review the material differences in fact or opinion report.
4. Establish a new base fee in an amount that is equal to the base fee established by the initial or the second appraisal or is within the range of values, if any, between the initial and second appraisals.
5. Notify the holder or holders of the amount of the new base fee.

33.8—Establishing Recreation Residence Lot Value During Transition Period of Cabin User Fee Fairness Act.

The transition period, as identified in § 614 of the Cabin User Fee Fairness Act (CUFFA), is that period of time between the date of enactment of CUFFA (Oct. 11, 2000) and the date upon which a base cabin user fee for a recreation residence is established as a result of implementing the final regulations, policies, and appraisal guidelines established pursuant to CUFFA.

The authorized officer shall, upon adoption of regulations, policies, and appraisal guidelines established pursuant to CUFFA, notify all recreation residence permit holders whose recreation residence lots have been appraised after September 30, 1995, that they may request the Forest Service to take one of the following actions:

1. Conduct a new appraisal pursuant to regulations, policies, and appraisal guidelines established pursuant to CUFFA (sec. 33.82).
2. Commission a peer review of an existing appraisal report of the typical lot completed after September 30, 1995 (sec. 33.83).
3. Establish a new base fee using the market value of the typical lot identified in an existing appraisal report completed on or after September 30, 1995 (sec. 33.81).

A request to act on one of these options must be made by a majority of the holders within the group of recreation residence lots represented by the typical lot. To facilitate this process, the authorized officer shall provide each permit holder with the names and addresses of all of the other permit holders within the group of recreation residence lots that are represented by the typical lot, so that the holders within the group have the opportunity to collectively determine whether to exercise one of the options identified above. The options described in paragraphs 1 through 3, and explained in further detail in section 33.81 through 33.83, shall be the only means by which a new base cabin user fee is established during the transition period for those lots which were appraised between September 30, 1995 and October 11, 2000. Holders who request a new appraisal or the commissioning of a peer review will not have the right to request a second appraisal as provided for in section 33.7.

33.81—Use of Appraisal Completed After September 30, 1995.

1. Establish a new base fee using 5 percent of the fee simple value, indexed to the current year, of a Forest Service approved appraisal report of a typical lot completed after September 30, 1995, when:

a. Within 2 years following the adoption of regulations, policies, and appraisal guidelines established pursuant to CUFFA, a request to do so is submitted in writing to the authorized officer by a majority of the holders within the group of recreation residence lots represented by a typical lot included in the appraisal (sec. 33.8, para. 3).

b. A majority of permit holders in a group of recreation residence lots fail to submit, within 2 years following the adoption of regulations, policies, and appraisal guidelines established pursuant to CUFFA, a request for one of the three options identified in section 33.8.

c. A peer review is requested and completed (sec. 33.8, para. 2), and the review determines that the appraisal completed after September 30, 1995, is consistent with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA.

2. Implement the new base fee at the time of the next regularly scheduled annual billing cycle, subject to the phase-in provisions (sec. 33.12).

33.82—Request for New Appraisal Conducted Under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA.

The holders must make a request for a new appraisal within 2 years following the adoption of regulations, directives, and appraisal guidelines for recreation residences established pursuant to CUFFA. The authorized officer shall inform the holders that the request for a new appraisal must be submitted in writing to the authorized officer and must be signed by the majority of the recreation residence holders within the group of recreation residence lots represented by the typical lot to be appraised. The authorized officer shall also inform those holders requesting a new appraisal that in their request they must agree to collectively pay for one-half of the cost to conduct the new appraisal. In addition, holders whose previous appraisal indicated that a base fee would increase more than $3,000 from the annual fee being assessed on October 1, 1996, shall be notified that they must include the statement in exhibit 01 as a part of their request for a new appraisal. The information required in the statement will be provided to the holder by the authorized officer.

33.82—Exhibit 01.

Statement for Holders Requesting New Appraisal When Previous Appraisal Indicated a Base Fee Increase of More Than $3,000 from Annual Fee Assessed on October 1, 1996.

We hereby agree that, if the new base fee established by the new appraisal results in an amount that is 90 percent or more of the fee determined by the previously completed appraisal of this typical lot (specifically, that appraisal dated _____, with an estimated fee simple value of $_____, and an indicated annual fee of $_____), each of the permit holders within this group of recreation residence (*indicate tract name and lots*) shall be obligated to pay to the United States the following:

1. The base fee that shall be established using the results of the new appraisal being requested, subject to the phase-in provisions of section 609 of CUFFA; and
2. The difference between (a) the annual fee that was paid during calendar years _____, _____, _____, (enter each calendar year beginning with that year when a new base fee based upon the above-referenced appraisal would have otherwise been implemented), and ending with calendar year _____ (enter the calendar year the request for a new appraisal is made), and (b) the amount that the annual fee for each of those identified calendar years would otherwise have been had a new base fee been assessed as a result of the above-referenced appraisal, pursuant to the phase-in provisions in effect and applicable during that time. This difference for those calendar years cumulatively totals $_____, as itemized on the enclosed worksheet (enter the cumulative difference and attach a worksheet showing how it was calculated, itemized for each of the calendar years identified above).

We agree that the cumulative amount identified in Item #2 (above) shall be assessed as a premium fee amount, payable in full or in three (3) equal annual installments, in addition to the phase-in of the new base user fee established by the results of the new appraisal.

The authorized officer shall, upon receipt of a formal request, initiate a new appraisal of the typical lot in accordance with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA. The date of value of the new appraisal shall be the same date of value as that identified in the appraisal report it is intended to replace.

33.83—Request for Peer Review Conducted Under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA.

A request for a peer review of an existing appraisal report completed after September 30, 1995, shall be made within 2 years following the adoption of regulations, policies, and appraisal guidelines for recreation residences pursuant to CUFFA. The request shall be submitted in writing to the authorized officer and must be signed by a majority of the recreation residence holders within the group of recreation residence lots represented by the typical lot that was appraised. The holders requesting the peer review shall, in their request, agree to collectively pay for one-half the cost to commission the review. In addition, holders requesting a peer review where the appraisal to be reviewed established a base fee that was more than a $3,000 annual increase to the fee being assessed the holders on October 1, 1996, shall include the statement contained in exhibit 01 as a part of their request. The information required in the statement will be provided to the holder by the authorized officer.

33.83—Exhibit 01.

Statement for Holders Requesting Peer Review When Previous Appraisal Indicated a Base Fee Increase of More Than $3,000 from Annual Fee Assessed on October 1, 1996.

We hereby agree that, if the new base fee from the peer review results in an amount that is 90 percent or more of the fee determined by the previously completed appraisal of this typical lot (specifically, that appraisal dated _____, with an estimated fee simple value of $ _____, and an indicated annual fee of $ _____), then each of the permit holders within this group of recreation residence (*indicate tract name and lots*) shall be obligated to pay to the United States the following:

1. The base fee that shall be established pursuant to this peer review, subject to the phase-in provisions of section 609 of CUFFA; and

2. The difference between (a) the annual fee that was paid during calendar years _____, _____ , _____ (enter each calendar year beginning with that year when a new base fee based upon the above-referenced appraisal would have otherwise been implemented), and ending with calendar year _____ (insert the calendar year in which the request for a peer review is made), and (b) the amount that the annual fee for each of those identified calendar years would otherwise have been, had a new base fee been assessed as a result of the above-referenced appraisal, pursuant to the phase-in provisions in effect and applicable during that time. This difference for those calendar years cumulatively totals $ _____, as itemized on the enclosed worksheet (enter the cumulative difference, and include an attached worksheet showing how it was calculated, itemized for each of the calendar years identified above). We agree that the cumulative amount identified in Item #2 (above) will be assessed as a premium fee amount, payable in full or in three (3) equal annual installments, in addition to the phase-in of the new base user fee established by the results of the peer review.

The authorized officer shall commission a peer review of the existing appraisal report upon receipt of a written request to do so and upon submission of the appropriate documentation that shows that the request is being made by a majority of the holders affected. The manner in which the peer review is conducted shall be based upon the membership in a professional organization of the appraiser who conducted that appraisal as follows:

1. *Appraisals Prepared by an Appraiser Who Is a Member of a Single Appraisal Sponsor Organization of the Appraisal Foundation.* If the appraiser who prepared the appraisal report that will be reviewed is a member of a single appraisal sponsor organization of the Appraisal Foundation, the authorized officer shall submit the appraisal report, appraisal review report, and peer review report instructions to that appraisal sponsor organization for assignment to a member of an established panel of accredited or designated members selected by the sponsor organization for the purpose of peer review. In consultation with the accredited or designated panel member, the sponsor organization shall provide the authorized officer an estimate of total cost for the peer review. The authorized officer shall consult with a representative of the permit holders requesting the peer review to determine if the holders wish to proceed with the review, based on the estimated cost. If a peer review is conducted, the review report shall be prepared in compliance with the review instructions provided with the existing appraisal report. The peer review report shall be confined to an evaluation of whether the original appraisal report includes provisions or procedures that were implemented or conducted in a manner that is inconsistent with regulations, policies, or appraisal guidelines adopted pursuant to CUFFA and, if so, which provisions and to what effect. The peer review report is intended to be an administrative review report in conformance with the USPAP.

2. *Appraisals Prepared by an Appraiser Who Is Not a Member of a Sponsor Organization, or Is a Member of Two or More Sponsor Organizations of the Appraisal Foundation.* If the appraiser who prepared the appraisal report that will be reviewed is not a member of a sponsor organization of the Appraisal Foundation, or is a member of two or more sponsor organizations of the Appraisal Foundation, the authorized officer shall submit the appraisal report, appraisal review report, and peer review report instructions, after consultation with the requesting permit holders, to a sponsor organization that has established a panel for peer review of recreation residence lot appraisals. If the authorized officer and a majority of the requesting permit holders cannot agree on which sponsor organization to solicit for the peer review, the authorized officer shall make the decision based upon a recommendation from the Regional Appraiser. The authorized officer shall request the selected appraisal sponsor organization to assign a member of the established panel of accredited or designated members to conduct the peer review. The authorized officer shall also request the sponsor organization to provide the authorized officer, in consultation with the accredited or designated panel member, an estimate of total cost for the peer review. The authorized officer shall consult with a representative of the requesting permit holders to determine if the holders want to proceed with the review, based on the estimated costs. If a peer review is conducted, the review report shall be prepared in compliance with the review instructions provided with the existing appraisal report. The peer review report shall be confined to evaluation of whether the original appraisal report includes provisions or procedures that were implemented or conducted in a manner that is inconsistent with regulations, policies, or appraisal guidelines adopted pursuant to CUFFA and, if so, which provisions and to what effect. The peer review report is intended to be an administrative review report in conformance with the USPAP.

a. If the peer review shows that the appraisal report is consistent with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA, the authorized officer shall establish a new base fee using 5 percent of the fee simple value of the typical lot identified in the appraisal report.

b. If the peer review results in a determination that the appraisal report was not conducted in a manner consistent with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA, the authorized officer shall either:

(1) Establish a new base fee to reflect consistency with the regulations,

policies, and appraisal guidelines adopted pursuant to CUFFA, or

(2) Conduct a new appraisal in accordance with the provisions of CUFFA if requested by a majority of the affected holders.

* * * * *

FSH 5409.12—Appraisal Handbook

Chapter 60—Appraisal Contracting

65—Contract Appraisals for Special Purposes.

65.3—Recreation Residence Lots.

The standard specifications for recreation residence lot appraisals shall be used Service-wide (sec. 66, ex. 03). Do not modify or deviate from these specifications without the approval of the Washington Office, Director of Lands.

Require all appraisers conducting a second appraisal for a recreation residence lot to submit an Assignment Agreement (sec. 66, ex. 04).

66—Exhibits.

1. Exhibit 03—Basic Specifications for the Appraisal of Recreation Residence Lots.

2. Exhibit 04—Assignment Agreement for the Appraisal of Recreation Residence Lots.

BILLING CODE 3410–11–P

66 - Exhibit 03

BASIC SPECIFICATIONS
FOR THE APPRAISAL OF RECREATION RESIDENCE LOTS

These specifications replace Section C of the Basic Specifications for Real Property Appraisal in total. They are intended for use in the appraisal of recreation residence lots. The procedures for identifying, inventorying, and preparing for the appraisal of these lots are included in FSH 2709.11, Chapter 30.

SECTION C-2 BASIC SPECIFICATIONS FOR REAL PROPERTY APPRAISALS

SECTION C-2.1 - GENERAL SPECIFICATIONS

C-2.1(a) - Scope of Service. The Contractor shall furnish all materials, supplies, tools, equipment, personnel, travel (except those to be furnished by the Government as listed in Section I), and shall complete all requirements of this contract including performance of the professional services listed herein.

The project consists of one or more self-contained appraisal report(s) per bid item for the specified property(ies). For the purposes of these specifications ." . . . any appraisal report, whether identified by the appraiser as a self-contained report or a summary report, will be considered as meeting the "Uniform Standards of Professional Appraisal Practice" (USPAP) requirements for a 'self-contained' report if it has been prepared in accordance with . . ." the "Uniform Appraisal Standards for Federal Land Acquisitions" (UASFLA, 2000; Section A). The report shall provide an estimate of market value for the estate to be appraised, and shall conform to the current edition of USPAP, published by The Appraisal Foundation, as well as UASFLA.
The Contractor may be provided a pre-determined date of value for the entire project; otherwise, the date of the value estimate shall be the last date the appraiser inspected the appraised property.

If clarification of these specifications is needed, and/or to arrange for the lot inspection and pre-work meeting, the appraiser shall contact the assigned Forest Service review appraiser.

_____ (Review Appraiser)
_____ (Mailing Address)
_____ (Phone Number)

The Contractor's contact with Forest Service officials is limited to the Contracting Officer, the assigned review appraiser, and the Regional Appraiser. The Contractor shall notify the assigned review appraiser of any requests for information by other Forest Service officials.

66 - Exhibit 03--Continued

C-2.1(b) - Appraisal Report. The appraiser selected for the assignment shall make a detailed field inspection of the subject property as identified in Exhibit __, and shall make such investigations and studies as are necessary to derive sound conclusions and to prepare the appraisal report.

C-2.1(c) – Pre-Work Conference: At the request of the assigned Forest Service review appraiser, the appraiser will be required to attend a pre-work conference for discussion and understanding of these instructions. The pre-work conference may be held in conjunction with the property examination [C-2.1(d)].

C-2.1(d) - Examination Notice. The authorized Forest Service officer, assigned Forest Service review appraiser, and Contractor shall offer to meet with the affected permit holders to provide them with information concerning the appraisal. The Contractor shall provide the permit holders at least a 30-day written notice in advance of the meeting. At the meeting, holders will be advised of the appraisal process, the method of appraisal, and selection of typical lots. The holders shall be given the opportunity and invited to provide the appraiser with factual or market information pertinent to the valuation of the typical lot or lots. This information must be submitted to the Contractor in writing and shall be accounted for in the appraisal report. Permit holders will be afforded the opportunity to meet the Contractor individually, or as a group.

The Contractor shall provide the 30-day advance meeting notification by certified mail, return receipt requested, of the date and approximate time of the meeting. Documentation of notification shall be contained in the addenda of the appraisal report. The holders shall be given the opportunity to accompany the Contractor during the scheduled permitted recreation residence lot property examination. The Contractor shall certify that the signer of the report has personally visited the appraised property and all of the comparable transactions used in the comparative analyses.

C-2.1(e) - Updating of Report. Upon the request of the Government, the Contractor shall, during a 2-year period following the date of the appraisal report, update the value as of a specified date. The updated report shall be submitted in original and _____ copies (number of copies to be determined) and shall include sales data or other evidence to substantiate the updated conclusion of value. For the suggested format, see Section C-2.3.

C-2.1(f) - Testimony. Upon the request of the United States Attorney or the Department of Justice, the Contractor shall, in any judicial proceedings, testify as to the value of any and all property included in the appraisal report as of the valuation date.

C-2.1(g) - Definition of Terms. Unless specifically defined herein or in CUFFA Section 604, the USPAP, or the UASFLA, definitions of all terms are the same as those found in "The Dictionary of Real Estate Appraisal" (Appraisal Institute), current edition. The UASFLA shall take precedence in any differences among definitions.

66 - Exhibit 03--Continued

SECTION C-2.2 - TECHNICAL SPECIFICATIONS

Application of These Specifications. These technical specifications reflect the standards for the appraisal of property to be authorized for occupancy as a recreation residence lot by the Forest Service. The typical lot or lots to be appraised for this assignment are described in Exhibit ____.

Federal Law Controls. Federal law may differ in some important aspects from the laws of some states. Accordingly, it is incumbent upon the appraiser to understand the applicable Federal law as it affects the appraisal process in the estimation of market value.

Federal law is reflected in UASFLA. These specifications follow UASFLA format, with emphasis on issues of special concern to the Forest Service. It should not be construed that the appraiser is to consider only the emphasized items. Appraisal reports shall be prepared in compliance with UASFLA standards and Forest Service appraisal instructions provided by the assigned review appraiser.

One aspect of UASFLA that the appraiser should be aware of is the "unit rule." The unit rule requires valuing property as a whole rather than by the sum of the values of the various interests into which it may have been carved. A second aspect of the unit rule is that different elements or components of a tract of land are not to be separately valued and added together. See UASFLA, Section B-13, for further discussion of the unit rule.

Jurisdictional Exception Rule. Conflicts between UASFLA and USPAP are minimal. When there is conflict, UASFLA takes precedence. It may be necessary to invoke the Jurisdictional Exception Rule (USPAP) to meet certain standards of the UASFLA and the "Cabin User Fee Fairness Act of 2000" (CUFFA). Invocation of the Jurisdictional Exception Rule must include citation of the over-riding Federal direction, rule, regulation, or law that requires it. The planned use of the Jurisdictional Exception Rule of the USPAP shall be discussed with the assigned Forest Service review appraiser no later than the pre-work meeting.

Comprehensive Review. Federal law requires review of all appraisals by a qualified review appraiser to assure they meet applicable appraisal requirements, including those in UASFLA, Forest Service direction, and these specifications. Compliance with USPAP will also be reviewed. Findings of deficiency shall be discussed and corrections requested once the appraisal report has been delivered. A value opinion is acceptable for agency use only after the assigned Forest Service staff review appraiser has approved the appraisal report. (FSM 5411)

Freedom of Information Act. Freedom of Information Act and CUFFA provisions will result in release of all or part of the appraisal report to the public. Prepare the report accordingly:

66 - Exhibit 03--Continued

a. Analytical methods and techniques shall be explained (in so far as possible) in a manner understandable to the public, as well as the reviewer.

b. If providers of information request confidentiality, such information shall not be included in the report. Confidential information shall be made available to the reviewer upon request, but shall not be incorporated in a Forest Service system of records.

Unit of Comparison. The final opinion of value shall be on the basis of fee simple value for the typical lot, rather than a unit price expressed as a value per square foot, per acre, per front foot, or similar unit. Normally, the unit of comparison in the appraisal of recreation residence lots shall be the lot. Price per front foot for waterfront lot may be appropriate where it is demonstrated similar lots are bought and sold on a front-foot basis. However, the final opinion of value for the typical recreation residence lot shall be in terms of total fee simple value for the lot.

Lot. The appraiser shall identify the lot to be appraised in a manner that is consistent with the definition of a lot as identified at 36 CFR 251.51. When recreation residence uses and facilities occur beyond the platted boundaries displayed on a recreation residence tract map or beyond "lot" boundaries marked on the ground, the lot to be appraised shall extend beyond those plotted or marked boundaries to include all National Forest System land and related improvements being used or occupied by the permit holder.

1. Examples of uses or facilities that, in addition to the recreation residence itself, are considered related improvements may include, but are not limited to:

a. Outbuildings.

b. Wood piles.

c. Retaining walls.

d. Picnic tables.

e. Driveways and parking areas.

f. Trails and boardwalks.

g. Campfire rings, seats, and benches.

h. Constructing and maintaining of lawns, gardens, flower beds, and landscaped terraces.

66 - Exhibit 03--Continued

i. Manipulation and/or maintenance of native vegetation, except as provided for in paragraph 2a.

2. Related improvements do not include:

a. Manipulated and/or maintained native vegetation that is manipulated or maintained for the primary purpose of protecting property and mitigating safety concerns, such as the removal of hazard trees, and the treatment/management of vegetation, approved by the authorized officer, to reduce fuel loading and to create defensible space for wildfire suppression purposes.

b. Tract association- or community-owned improvements or uses such as boat docks, swimming areas, and water or sewer systems that are under a separate authorization and issued in the name of a tract association or other entity representing the owners of the recreation residences.

Physical Capacity of the Lot to Accommodate Essential Infrastructure. The physical capacity of the lot and appurtenant area to support essential infrastructure associated with recreation residence use, such as an appropriate septic system, domestic water source (well and pump) in conformance with local health and safety requirements, shall be documented in the appraisal and reflected in the value conclusion.

C-2.2(a) - Format. The report shall be typewritten on bond paper sized 8 1/2 by 11 inches with all parts of the report legible and shall be bound with a durable cover. The face of the report shall be labeled to identify the appraised property and to show the contract number, appraiser's name and address, and the date of the appraisal. All pages of the report, including the exhibits, shall be numbered.

C-2.2(b) - Contents. Following is a suggested format, based on UASFLA. Although it is not required that the appraiser strictly adhere to this format, all items must be addressed. It should be noted that in most instances, these specifications reference UASFLA without reprinting them here. Important items are noted below, but are not all-inclusive. It is incumbent upon the appraiser to read, understand, and comply with UASFLA and these specifications.

C-2.2(b)(1) - PART I – INTRODUCTION. Follow the UASFLA format.

1. Title Page.

2. Letter of Transmittal.

3. Table of Contents.

4. Appraiser's Certification: Follow the UASFLA (A-4) and USPAP guidelines,

66 - Exhibit 03--Continued

but include the following:

"I have made a personal inspection of the appraised property which is the subject of this report and all comparable sales used in developing the opinion of value. The date(s) of inspection was _____, and the method of inspection was _____. (If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)

"The landowner and/or permit holder or the landowner's and/or permit holder's representative jointly inspected the property with the appraiser on (date)." or "The landowner and permit holder were invited to jointly inspect the property and declined."

"In my opinion, the market value (or other value as required) is $ as of (date)_____."

By (Appraiser's signature)_____
Printed Name
State Certification #

5. Summary of Salient Facts and Conclusions. The Summary of Salient Facts and Conclusions is a brief recital of the principal facts and conclusions contained in the appraisal report. The purpose is to offer convenient reference to the reader. In addition to the reporting requirements found in UASFLA, items which must be included in the summary are:

a. Name of recreation residence tract.

b. Size range of lots.

c. Authorized use, which is the highest and best use.

d. Improvements furnished by the Forest Service (or any other entity who is or was not a cabin owner) included in the appraised value.

e. Estimated value of each typical lot.

f. Other pertinent facts and conclusions to provide ease of use of the report by the reader, including any hypothetical conditions, extraordinary assumptions, limiting conditions, or special instructions.

g. Effective date of appraisal.

66 - Exhibit 03—Continued

6. Photographs of Subject. Provide original color photographs or high quality color copies of photographs of the appraised property. Photographs may be a separate exhibit in the addenda or included with the narrative description of the appraised property and comparable sales. Show the following information with each photograph:

a. Identify the photographed scene. Indicate direction of view, vantage point, and other pertinent information. A map may be used to show some of this information.

b. The name of the photographer.

c. The date the photograph was taken.

7. Statement of Assumptions and Limiting Conditions. Note the following:

All appraisal reports submitted to the Forest Service for review become the property of the United States and may be used for any legal and proper purpose. Therefore, a condition that limits distribution of the report is not permitted.

If the appraisal has been made subject to any encumbrances against the property, such as easements, that shall be stated. It is unacceptable to state that the property has been appraised as if free and clear of all encumbrances, except as stated in the body of the report; the encumbrances must be identified in this section of the report.

The adoption of an uninstructed assumption or hypothetical condition that results in other than "as is" market value will invalidate the appraisal. Include only factors relating to the appraisal problem. Assumptions and limiting conditions that are speculative in nature are inappropriate. Do not include limiting conditions that significantly restrict the application of the appraisal.

In this section of the specifications, or in separate written instructions, the contractor must be instructed as to necessary hypothetical conditions or extraordinary assumptions. The Contractor shall recognize that the typical lot will not usually be equivalent to a legally subdivided lot. The Contractor shall not select sales of land within developed urban areas and, in most circumstances, should not select a sale of comparable land that includes land that is encumbered by a conservation easement or recreational easement held by a government or institution. Sales of land encumbered by an easement may be used in situations in which the comparable sale is a single home site and is sufficiently comparable to the lot or lots being appraised.

> "An appraiser cannot make an assumption or accept an instruction that is unreasonable or misleading. Agency instructions and/or legal instructions must have a sound foundation, must be in writing, and must be included in the appraisal report." (UASFLA D-3)

66 - Exhibit 03--Continued

All cabin-owner-provided improvements on and to the lot are excluded from consideration in the value conclusion.

All utilities, access, or facilities that, in accordance with the inventory of those improvements, are identified as having been provided by the cabin owner, or a predecessor of the cabin owner, are to be excluded from consideration in the value conclusion.

The lot is appraised as if held in private ownership.

The highest and best use of the lot is its authorized use, a recreation residence lot.

Lot size shall conform with all local zoning requirements in effect on the date of the original authorization and all applicable "grandfathering" provisions in effect on the date of value.

8. Scope of the Appraisal. This section shall fully describe the extent of investigation and analysis. The scope of work should be consistent with the intended use of the appraisal.

9. Purpose of the Appraisal. Note the following:

A description of the property rights appraised is to be included under factual data rather than in the Purpose section.

Use the following definition: "Market value is the amount in cash, or 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 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." (UASFLA A-9)

This definition makes no linkage between the estimated market value and exposure time. A specific exposure time shall not be cited in an appraisal report prepared under UASFLA standards. Invoke the Jurisdictional Exception Rule to avoid a violation of USPAP standards, which require a specific exposure time.

The purpose of the appraisal is to determine market value of the fee simple estate of a typical lot or lots. The appraisal will be used by the Forest Service to determine the base cabin user fee required by the "Cabin User Fee Fairness Act of 2000." Intended users of the appraisal are the Forest Service and affected cabin owners.

66 - Exhibit 03--Continued

10. Summary of Appraisal Problem

C-2.2(b)(2) - Part II - FACTUAL DATA

1. Legal Description. Note the following: The legal description is provided to the appraiser in the appraisal assignment. If a lengthy description would disrupt the narrative flow, it may be placed in the addenda and referenced in the text.

2. Property Rights. The estate appraised is fee simple title to the typical lot considered to be in a natural, native state. Utilities, access, or facilities serving the lot that are provided by the agency shall be included as features of the lot being appraised. Utilities, access, or facilities serving the lot that are provided by the cabin owner (or predecessor of the cabin owner) shall not be included as a feature of the lot being appraised. Utilities, access, or facilities serving the lot that are provided by a third party shall not be included as a feature of the lot being appraised, unless the Forest Service determines that the capital costs have not been paid by the cabin owner (or predecessor of the cabin owner). Discuss the effect on value of identified reservations, outstanding rights, and other encumbrances.

3. Area, City and Market Area Data. The use of boilerplate demographic and economic data is unnecessary and undesirable. Report only those data that directly impact the market analysis.

a. Area Map. Include a small-scale map showing the general location of the appraised property. It can be placed here or in the addenda.

b. Market Area Map. Show the appraised property and its immediate market area. The map may be placed here or in the addenda.

4. Property Data. Include a narrative description of the significant land features of the property being appraised. Briefly describe the typical recreation residence lot and group within the tract including the following:

a. Lot Description. Dimensions, size, shape, vegetative cover, soil types, topography, elevations, wetlands, flood plains, view, timber, water rights, effect of encumbrances, livestock forage, access, road frontage, utilities, location, or other characteristics that may affect value. A statement must be made concerning the existence or absence of mineral deposits having a commercial value. Evidence, if any, of hazardous substances shall be described by the appraiser. The typical lot is to be appraised as though in a natural, native state, defined by CUFFA as being free of any improvements at the time the lot was first authorized for recreation residence use by the agency.

b. Improvements. Note that the recreation residence is owned by the permit holder and that only the underlying National Forest System land is being appraised. The Contractor shall be provided applicable information contained in the inventory of improvements relating to the lot being appraised.

c. Fixtures.

d. Use History. 10-year history required.

e. Sales History. Include a 10-year record of all sales of the appraised property and, if the information is available, offers to buy or sell. If no sale has occurred in the past ten years, the appraiser shall report the last sale of the appraised property, irrespective of date.

f. Zoning and Other Land-Use Restrictions. Federal lands must be appraised under the hypothetical condition that they are already in non-Federal ownership and zoned consistent with similar non-Federal properties in the market area. The appraiser shall identify, in addition to zoning, all other land-use and environmental regulations, outstanding rights, and reservations that have an impact on the highest and best use and value of the property.

g. Appraised Property Map or Plat. Show the dimensions and topography of the appraised property in detail on a large-scale topographic map, at least 2 inches to the mile. The map may be placed here or in the addenda.

C-2.2(b)(3) - Part III – DATA ANALYSES AND CONCLUSIONS

1. Analysis of Highest and Best Use. The identified highest and best use shall be the authorized use; a lot suitable for use as a recreation residence lot. No other potential highest and best use shall be considered or discussed in the appraisal report. Most recreation residence lots were authorized prior to all forms of local zoning in their respective market areas. "Grandfathering" requirements recognized by local zoning authorities shall represent the capacity of the lot to meet current State and local government zoning and land use requirements.

2. Value Estimate by the Sales Comparison Approach. Nearby arm's length transactions, comparable to the land under appraisement, reasonably current, are the best evidence of market value. The Federal courts recognize the sales comparison approach as being normally the best evidence of market value.

Analyze the last sale of the subject property, if relevant. If not used, explain why. An unsupported claim that a sale of the subject property was a forced sale, or is not indicative of its current value, is unacceptable. (UASFLA B-5)

When supportable by market evidence, the use of quantified adjustments is

66 - Exhibit 03--Continued

preferred. Percentage and dollar adjustments may, and often should, be combined. Resort to qualitative adjustments only when there is inadequate market data to support quantitative adjustments. Factors that cannot be quantified are dealt with in qualitative analysis. When quantitative and qualitative adjustments are both used in the adjustment process, all quantitative adjustments should be made first.

Include a sales adjustment chart summarizing the adjustments and showing the final adjusted sale prices and how the sales compare with the subject property. Utilities, access, or facilities serving a lot that are provided by the agency shall be included as features of the lot being appraised. Utilities, access, or facilities serving a lot that are provided by the cabin owner (recreation residence permit holder) shall not be included as a feature of the lot being appraised. Utilities, access, or facilities serving a lot that are provided by a third party shall not be included as a feature of the lot being appraised unless the agency determines that the capital costs have not been or are not being paid by the cabin owner (or a predecessor of the cabin owner).

In a case where any comparable sale includes utilities, access, or facilities that are to be excluded in the appraisal of the subject lot, the price of the comparable sale shall be adjusted, as appropriate.

In selecting comparable sales, the appraiser shall recognize that the typical lot will not usually be equivalent to a legally subdivided lot. The appraiser shall not select sales of comparable land that are within developed urban areas and should not, in most circumstances, select a sale of comparable land that includes land that is encumbered by a conservation or recreational easement that is held by a government or institution, except land that is limited to use as a site for one home.

The Contractor shall use the following adjustment process outlined in Section 606(b)(4)(C) of CUFFA:

The appraiser shall consider, and adjust as appropriate, the price comparable sales for typical lot value differences which include, but are not limited to:

a. Differences in the locations of the parcels.

b. Accessibility. Include limitations on access attributable to weather, the conditions of roads and trails, restrictions imposed by the agency, or other factors.

c. The presence of marketable timber.

d. Limitations on, or the absence of, services. Consider the availability of law enforcement, fire control, road maintenance, or snow plowing.

e. The condition and regulatory compliance of any site improvements.

66 - Exhibit 03--Continued

f. Any other typical value influences described in standard appraisal literature.

The documentation of each comparable sale shall include:

a. Parties to the transaction.
b. Date of transaction.
c. Confirmation of the transaction. Confirm the transaction with the buyer, seller, broker, or other person having knowledge of the price, terms, and conditions of sale (all transactions must be verified with a party to the sale)
d. Market exposure.
e. Buyer motivation.
f. Location.
g. Size.
h. Legal description.
i. Property rights conveyed.
j. Consideration.
k. Financing terms.
l. Sale conditions. Conditions such as arm's length or distressed sale.
m. Improvements. Include the condition and regulatory compliance of all improvements.
n. Physical description. Consider accessibility, including limitations on access attributable to weather, road or trail condition, and restrictions on use; topography; vegetative cover and the presence of marketable timber; water influence; and other characteristics.
o. Limitation on, or the absence of, services. Consider the availability of law enforcement, fire control, road maintenance, or snow plowing
p. Non-realty items.
q. Economic characteristics.
r. Zoning Include any setback requirements
s. Subdivision covenants.
t. Current use.
u. Intended use.
v. Photographs.

Include a list of the sales considered, but not actually used, in the addenda. Cite pertinent facts such as date, size, buyer and seller, price, terms, location, and explain why each sale was not used.

The appraiser shall adhere to UASFLA direction pertaining to comparable sales requiring extraordinary verification and weighting considerations. These include sales to governmental agencies, sales to environmental organizations, sales to parties desiring to exchange the land to the government, distressed sales, and other atypical or non-arm's length sales. (UASFLA Sections B-4, D-9)

66 - Exhibit 03--Continued

The appraiser must interpret the foregoing data, analyses, and estimates and state the reasons why the conclusion is the best indication of the market value for the typical lot. The indications given by the various sales cited and compared shall be analyzed individually to reach the final opinion of value showing which sale or sales were considered most comparable and provided the most reliable estimate of value for the typical lot.

C-2.2(b)(4) - Part IV – EXHIBITS AND ADDENDA

Include the following items as applicable to the appraisal problem if not included in the body of the report:

1. Maps. Maps shall clearly identify the properties and be of sufficient quality to enable the reviewer to locate the properties on the ground. Maps shall be dated, include a legend, scale, and north arrow. The original copy of the report MUST contain original maps or vivid color copies.

a. Area Map. Small scale map showing the general location of the subject market area.

b. Market Area Map. This map shall show the appraised property and its immediate market area.

c. Tract Map or Plat. This shall be a large-scale (2-inch/mile) USGS or similar quality map that clearly shows the appraised property and pertinent physical features such as roads, streams, and improvements.

d. Recreation Residence Tract Plat. This map will be furnished by the Forest Service, if available. The map generally depicts tract groupings and typical lot or lots within a grouping.

e. Comparable Sales Location Map. This map shall show the location of the appraised property and the sales. Delineate the boundaries of the appraised properties and comparable sales when the map is of sufficient scale to be meaningful. If all pertinent comparable sales cannot be shown on the same map as the appraised property, a smaller-scale map (such as a state road map) may be included in addition to the larger scale map.

2. Sale Transaction Forms. Include a completed form showing all information for each comparable transaction used in the appraisal. Include a plat (if available), a USGS topographic map (if appropriate), and color photo(s) of each sale. The transaction number must match the number of the transaction listed in the report.

66 - Exhibit 03--Continued

3. Legal Description. Include a full legal description of the property appraised if not shown in the narrative section of the report.

4. Title Information. Include a copy of the statement of interest (status report) for the Federal land, if provided.

5. Photographs. Provide quality color photographs of the appraised property and all comparables in the original and all copies of the final report. Photographs may be a separate exhibit in the addenda or included with the narrative description of the appraised property and comparable sales. Show the following information with each photograph:

a. Identify the photographed scene. Indicate direction of view, vantage point, and other pertinent information. A map may be used to show some of this information.

b. The name of the photographer.

c. The date the photograph was taken.

6. A copy of the recreation residence permit for each typical lot. Include a copy of each permit in the appraisal report. In the case of multiple permits, the face page only may be included so long as at least one set of standard clauses is included.

7. A record of communications with the Forest Service and with cabin owners. Meeting notices, receipt of meeting notification, record of attendance at meetings with the appraiser, notes regarding participation by cabin owners at lot inspections, and other correspondence from/to cabin owners or the Forest Service must be included.

8. References. List sources of data, including documents and individuals.

9. Qualifications of the appraiser. Include the qualifications of all appraisers or technicians who made significant contributions to the completion of the appraisal assignment. The appraiser(s) must provide evidence of compliance with the certification requirements of the state(s) where the properties are located.

10. Assignment Agreement. Include a copy of the Assignment Agreement provided by the Forest Service and executed by the appraiser. (ex. 04)

SECTION E - INSPECTION AND ACCEPTANCE

E-1. Agriculture Acquisition Regulation (48 CFR Chapter 1), Clause 52.246-4, Inspection of Services - Fixed Price (Apr. 1984) (FSH 6309.32-AGAR 52.246-4) shall be the basis of inspection and acceptance.

66 - Exhibit 03--Continued

SECTION F - DELIVERIES OR PERFORMANCE

F-1. Time for Contract Performance.

The Contractor shall submit to the assigned Forest Service staff review appraiser, ___ original and ____ copy(ies) of the original appraisal report for approval within ____ days of the Notice to Proceed. The review appraiser will then review the final appraisal report for acceptance or to recommend revisions to the appraisal report. If revisions are necessary, the revised report shall be submitted within ___ days of notification.

F-2. Contract time will proceed according to the following phases. Upon the completion of one phase remaining contract time shall not be carried forward.

PHASE 1 - _____ Calendar days - The Contractor shall submit to the Government copy(ies) of the appraisal report. The appraisal report shall be submitted to the Contracting Officer (CO) within 30 calendar days after the date of value, unless otherwise specified in writing by the CO or Contracting Officer's Representative (COR), who is usually the assigned Forest Service review appraiser.

PHASE 2 - _____ Calendar days - The Government shall review the original appraisal report for acceptance.

PHASE 3 - _____ Calendar days - The Contractor shall correct any deficiencies, (if any) and submit the revised appraisal report to the Government.

PHASE 4 - _____ Calendar days - The Government shall review the revised appraisal report for acceptance.

F-3. Pre-work Conference. A pre-work meeting between the assigned Forest Service review appraiser and the Contractor is required, preferably during the lot examination with the permit holder present.

SECTION G - CONTRACT ADMINISTRATION DATA

G-1. Method of Measurement. The unit of measurement is designated in the Schedule of Items, Section B of the Contract.

G-2. Measurement shall be made for each item or unit of work as shown in the Schedule of Items, completed as described in the Specifications and Supplements thereto.

G-3. Payment for contract work shall be made only for items listed in the Schedule of Items. All other work shall be considered incidental and included in the payment of the items listed in the Schedule of Items.

66 - Exhibit 03--Continued

G-4. Payment shall be made upon receipt and approval of the final appraisal report. Typically, no progress payments shall be made. However, partial payments in an amount not less than 50 percent of the total price may be authorized if the technical review period shall be extensive due to the complexity of the appraisal problem.

G-5. Payment for updating shall be at a fixed fee that may be agreed upon at the time the updating is requested.

G-6. Payment for testimony shall be at a fixed fee to be negotiated at the time the testimony is requested. Travel expenses shall be paid at a rate not to exceed Federal Government travel allowances.

G-7. At the Contractor's request, the COR and the Contractor shall jointly prepare Form 6300-30, Contract Payment Estimate and Invoice, for the signature of the Contracting Officer for payment. It is not necessary for the Contractor to submit any other Invoice or Statement.

G-8. Basis of Payment. The accepted quantities shall be paid for at the contract unit price for the items shown in the Schedule of Items.

G-9. All submitted appraisal reports become the property of the United States and may be used for any legal and proper purpose.

SECTION I – CONTRACT CLAUSES

The Government shall furnish the following at the Supervisor's Office in (city), (state), at the Contractor's request after the award:

I-1. Use of aerial photographs of the appraised property and of such other aerial photographs as is available. (To be returned to the COR upon completion of the appraisal, if not included as an exhibit to the report).

I-2. Copies of pertinent Forest Service administrative maps as available for use in the appraisal report.

I-3. Current Forest Service Land Status Reports covering the Federal lands, if not previously furnished.

I-4. Copies of pertinent documents relevant to the assignment from the special-use folder not previously provided.

66 – Exhibit 04

ASSIGNMENT AGREEMENT FOR THE APPRAISAL OF RECREATION RESIDENCE LOTS

Typical Lot __
__*(Name)*_____ Summer Home Group or Tract

I, ***(Name of contract appraiser)***, of ***(Address)***, have received a written copy of the recreation residence lot appraisal instructions for the ***__(Name)____*** National Forest. These instructions were prepared by assigned Forest Service staff review appraiser ***(Name and accreditation)***. My work in compliance with those instructions will be reviewed by her/him for compliance with the appraisal standards cited below. She/he will apply the same review requirements to my appraisal that were applied to the original appraisal of the typical lot. (Last sentence applicable only with second appraisals.)

I agree to abide by the written instructions, including the format in which my appraisal must be documented.

I understand that the date of value for this assignment is ***__(Date)___.***

I understand the full, complete, and accurate definition of the appraisal problem.

I shall abide by the *Uniform Standards of Professional Appraisal Practice*, the *Uniform Appraisal Standards for Federal Land Acquisitions*, the applicable sections of the *Cabin User Fee Fairness Act of 2000*, the laws of the State of ***(State where typical lot is located)***, under which I am certified as a general appraiser, and the code of professional ethics and standards of professional practice of those appraisal organizations to which I belong.

I accept the requirements of this appraisal assignment that are imposed by Federal statutes and regulations, Forest Service policies and procedures, and instructions unique to this assignment.

_____ _____
(Signature of Contractor) (date)

(typed name and accreditation of Contractor)
(State appraiser certification information)

Note: The following table will not appear in the Forest Service Manual or Forest Service Handbook.

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES

CUFFA reference	Forest Service manual or handbook directive	Proposed direction	Final direction
Section 604	FSM 2340.5—Definitions	Added definition for ''caretaker cabin.'' A caretaker cabin is a residence occupying a lot within a recreation residence tract that is being used to provide caretaker services and security to the recreation residences within that tract.	Revises the definition of ''caretaker cabin'' to more closely reflect the description in CUFFA.
Section 602 and 603	FSM 2347.1—Recreation Residences.	Maintained existing language of old directive, but added direction that the Forest Service shall, to the maximum extent practicable, manage the recreation residence program to preserve the opportunity for individual and family-oriented recreation.	No changes except to add direction that community owned improvements are to be authorized under separate permit and authority.
Sections 604 and 607(b)	FSM 2347.12—Caretaker Cabin	Changed section caption to ''Caretaker Cabins,'' and retained direction for authorizing a caretaker cabin. FSM 2347.12b provided that a fee for a caretaker cabin is the same as a fee for use of the same lot as a recreation residence.	Revised to clarity and for purposes of using the terminology in the corresponding provisions in CUFFA.
Section 606	FSM 2721.23d—Fee Determination.	Established a 10-year appraisal cycle.	No changes in final directive.
	FSH 2709.11, Section 33—Recreation Residence Lot Fees.	Changed caption to ''Recreation Residence Lot Fees.''	No changes in final directive.
Section 604	FSH 2709.11, Section 33.05—Definitions.	Added a section that defines ''cabin,'' ''recreation residence lot,'' ''market value,'' ''tract,'' ''typical lot,'' ''recreation residence,'' and ''natural, native state.''	Revises definitions for ''cabin,'' ''recreation residence,'' and ''simple majority.'' Adds definition of ''urban'' used in section 33.4.
Sections 606 through 608	FSH 2709.11, Section 33.1—Base Fees and Annual Adjustments.	Changed the caption to ''Base Fees and Annual Adjustments,'' and referenced appraisal procedures addressed in proposed sections 33.11 through 33.13.	No changes in final directive.
Sections 606(b)(4)(D) and 607(a)	FSH 2709.11, Section 33.11—Establishing New Base Fee.	This section replaced the now obsolete direction concerning fee credit, and instead provides that the base fee for a recreation residence lot shall be 5 percent of the market value of the lot as determined by appraisal. It eliminated direction (currently found in sec. 33.1, para. 5) directing that a premium of 25 percent of the base fee or $100 whichever is greater, be added to the base fee for each sleeping structure on a recreation residence (in addition to the recreation residence). This section also provided that the base fee shall be recalculated once every 10 years.	No changes in final directive, except for numbering and titling of paragraphs.

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

CUFFA reference	Forest Service manual or handbook directive	Proposed direction	Final direction
Section 609	FSH 2709.11, Section 33.12—Phase-in of Base Fee.	This new section provided direction for implementing the phase-in provision of CUFFA, and directed a phase-in of fees whenever the establishment of a new base fee results in an increase of more than 100 percent to a holder's most recent annual fee. The section included an example to demonstrate how the phase-in would be applied when a base fee results in more than a 100 percent increase of an annual fee.	No changes in final directive, except to make the phase-in example an exhibit.
	FSH 2709.11, Section 33.13—Annual Adjustments of Recreation Residence Fees.	Stated that the Forest Service would continue to use existing direction for annually indexing recreation residence rental fees, using the 2nd quarter to 2nd quarter change in the IPD–GNP. However, this section directed the implementation of a maximum adjustment of 5 percent in those years in which the annual change in the IPD–GNP index exceeds 5 percent, as provided in section 608(d) of CUFFA. Whenever the annualized change in the IPD–GNP exceeds 5 percent, then the maximum annual adjustment in the rental fee for such years will be 5 percent, and that part of the adjustment in excess of 5 percent would be applied in the next annual rental fee payment when the index change is less than 5 percent. This section included two examples to demonstrate how rental fee increases in excess of 5 percent would be applied when the annualized change in the IPD–GNP exceeds 5 percent. (**Note:** Approximately 2 years after adopting the proposed rule and proposed directives in this notice, the Forest Service will develop direction to annually adjust recreation residence rental fees using the rolling 5-year average of the "Index of Agriculture Land Prices" published by the Department of Agriculture, as directed in section of 608(a) and (b) of CUFFA).	No changes in final directive, except to make the phase-in examples exhibits.

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

CUFFA reference	Forest Service manual or handbook directive	Proposed direction	Final direction
Section 607(c) and (d)	FSH 2709.11, Section 33.2—Fees When Determination is Made To Place Recreation Residence on Tenure.	This section clarified direction on fees when a decision is made to discontinue the recreation residence use by providing specific instructions for the assessment of land use fees after a holder has been provided with a minimum 10 years of advance notice of the agency's decision to discontinue the holder's recreation residence use. The proposed directive included a table that demonstrated how the fee is reduced by 10 percent each year during the last 10 years of the permit term. This section also provided a process for recapturing fees that were forgone, should a subsequent decision be made by the agency not to discontinue the recreation use, but allow it to continue.	No changes in final directive, except to make the phase-in chart for fees when a recreation residence is placed on tenure an exhibit.
Section 607(e)	FSH 2709.11, Section 33.3—Fee When Recreation Residence Use Is Terminated or Revoked as Result of Acts of God or other Catastrophic Events.	This section provided agency direction concerning fee obligations of the holder in the event of a catastrophe or an ''act of God'' that precluded the recreation residence from being safely used and occupied for recreation residence purposes. It directed that in such an event, the fee obligations of the holder shall terminate as of the date of the event or occurrence, and provided for a refund of a prorated portion of the fee that has already been paid for the billing year in which the catastrophic event occurred.	No changes in final directive.
Section 606	FSH 2709.11, Section 33.4—Establishing Market Value of Recreation Residence Lot.	This section provided technical considerations and the procedures to be followed when appraising a recreation residence lot.	Changes the numeric coding of the section and exhibits from a single digit scheme to a two digit scheme (sec. 66) to conform with other sections in FSH 5409.12, chapter 60. The exhibits for recreation residences are now enumerated as ex. 03 (previously ex. 06) and ex. 04 (previously ex. 07) respectively.
		Paragraph 1 directed that appraisals be conducted by either a staff or contract appraiser who is licensed to practice in the State in which the recreation residence(s) to be appraised are located. It directed that the selection of a staff or contract appraiser be based on the individual's having had adequate training and demonstrated competence to conduct the appraisal assignment. It also directed that the appraiser sign an ''Assignment Agreement'' as provided in FSH 5409.12, section 6.9, exhibit 07 (see below).	Clarifies in paragraph 1 that the authorized offer, based on the advice of the assigned Forest Service review appraiser, is the only person authorized to make adjustments to fees where there may be a measurable difference among recreation residence lots within a grouping of lots.

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

CUFFA reference	Forest Service manual or handbook directive	Proposed direction	Final direction
		Paragraph 2 directed that the appraiser evaluate the market value of the fee simple estate of the lot, and that the access, utilities, and facilities that service the lot to be appraised that had been paid for by either the Forest Service or a third party, be included as features of the lot. Paragraph 3 directed that only previously selected typical lots be appraised pursuant to section 33.41. Paragraph 4 directed that the authorized officer provide the appraiser with an inventory of utilities, access, and facilities servicing each typical lot to be appraised as provided in section 33.42. Paragraph 5 included an itemized listing of the standards and provisions for which compliance is required in conducting and preparing the appraisal. Paragraphs 6 and 7 provided direction for identifying and selecting sales of comparable land in appraising the value of a typical lot. Paragraph 8 included a listing of typical value influences that the appraiser must consider in adjusting the prices of comparable sales in the appraisal of a typical lot. Paragraph 9 directed that the authorized officer and the appraiser initiate a meeting with all affected permit holders prior to conducting an appraisal, specified how to notify the holders of such a meeting, and what to advise the holders at the meeting. This paragraph also directed the appraiser to give affected holders advance of notice of the appraiser's field visit to the recreation residence (or lots) being appraised, and that the holders be given the opportunity to be present during that lot visit.	There are no other changes in paragraphs 2 through 9 in this section.
Section 606	FSH 2709.11, Section 33.41—Selection and Appraisal of Typical Lot.	This section proposed a more detailed process than previous direction for identifying and selecting typical lots, with strong emphasis on working with the affected holders in the selection of a typical lot or lots. Authorized officers were directed to seek the concurrence of affected permit holders in identifying recreation residence groupings and in selecting the typical lot or lots to be appraised.	No major revisions except to add provisions allowing the authorized officer to consider three options when lots within a grouping of lots are not comparable to the typical lot representing that group with respect to facilities, utilities, and access serving the typical lot

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

CUFFA reference	Forest Service manual or handbook directive	Proposed direction	Final direction
Section 606(a)(1)	FSH 2709.11, Section 33.42—Inventorying of Utilities, Access and Facilities.	This section directed the authorized officer to identify and inventory utilities, access, and facilities that provide service to each typical lot within a recreation residence tract. It also provided criteria or guidelines for the authorized officer to use in making a determination as to who paid for the capital costs to construct those utilities, access, and other facilities servicing each typical lot.	The caption for section 33.42a is changed from ''Utilities Provided by Holder'' to ''Types of Utilities, Access, and Facilities to Include in Inventories'' and provides examples of the types of utilities that should be considered in the inventory of a typical lot. The direction previously found in section 33.42a is revised and moved to section 33.42b, para. 1. The caption for section 33.42b has been changed from ''Utilities Provided by the Forest Service or Third Party'' to ''Criteria To Be Considered in Determining Who Paid for Capital Cost of Inventoried Utilities, Access, and Facilities.'' The direction in section 33.42b is revised to clarify through examples, criteria for determining who paid for the capital costs of inventoried utilities, access and facilities; and that the Forest Service is responsible for obtaining that evidence.
Section 606	FSH 2709.11, Section 33.5—Appraisal Specifications.	This section made reference to FSH 5409.12, section 6.5; section 6.9, exhibit 06, Specifications for Conducting an Appraisal for Recreation Residences; and section 6.9 exhibit 07, Assignment Agreement for the Appraisal of Recreation Residence Lots.	No changes in final directive.
Section 606	FSH 2709.11, Section 33.6—Review and Acceptance of Appraisal Report.	This section provided direction concerning the manner in which a Forest Service Review Appraiser shall review an appraisal report and approve it for the authorized officer's acceptance and use in establishing a new base fee.	No changes in final directive.
Section 610(a)	FSH 2709.11, Section 33.7—Holder Notification of Accepted Appraisal Report and Right of Second Appraisal.	This section provided more detailed direction concerning the authorized officer's obligation to notify the affected holder or holders of the agency's acceptance of an appraisal report for the purpose of establishing a new base fee. It directed that if the holder intends to secure a second appraisal, the holder must formally notify the Forest Service of that intent within 60 days. This direction also provided that if the holder chooses to exercise the option to secure a second appraisal, the holder must provide the authorized officer with a second appraisal report within one year of the date of the holder's receipt of the notice from the authorized officer.	Section 33.7 was revised to clarify that the holder shall be provided a copy of the appraisal report and supporting documentation associated with the typical lot upon which the holder's fee is based.

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

CUFFA reference	Forest Service manual or handbook directive	Proposed direction	Final direction
Section 610(b)	FSH 2709.11, Section 33.71—Standards for Second Appraisal.	This section proposed more detailed direction concerning the qualifications of an appraiser selected by the holder to conduct a second appraisal, and the standards that must be followed for conducting a second appraisal. The direction proposed that the second appraiser also sign an Assignment Agreement, pursuant to FSH 5409.12, section 6.9, exhibit 07.	Section 33.71b, Appraisal guidelines, has been rewritten to more clearly articulate its purpose and explain how the procedures provided for in this section are in conformance with USPAP.
Section 610(c) and (d)	FSH 2709.11, Section 33.72—Reconsideration of Recreation Residence Base Fee.	This section provided detailed, time certain procedures, for the reconsideration of a new base fee pursuant to a second appraisal. It directed that the holder shall be provided with no more than 60 days following the authorized officer's receipt of a second appraisal report, within which to formally request a reconsideration of the new base fee, based on the findings of the second appraisal. It also directed that the authorized officer, within 60 days following receipt of that request from the holder, review the agency's initial appraisal and the holder's second appraisal, and established a new base fee pursuant to the results of either appraisal, or somewhere within the range of values established by both appraisals.	This section was revised to clarify that the authorized officer may only consider the second appraisal report if it is reviewed and approved by the assigned Forest Service review appraiser and to add the requirement that the authorized officer shall review the material differences in fact or opinion in establishing a new base fee.
Section 614	FSH 2709.11, Section 33.8—Establishing Recreation Residence Lot Value During Transition Period of Cabin User Fee Fairness Act.	This section required the authorized officer to notify recreation residence permit holders that when the agency adopts final regulations, policies, and appraisal guidelines pursuant to CUFFA they may request either: (1) A new appraisal; (2) a peer review of an exiting appraisal completed after September 30, 1995; or (3) a base fee using the value established by an appraisal completed after September 30, 1995.	Clarifies that the options described in paragraphs 1 through 3, and explained in further detail in section 33.81 through 33.83, are the only means by which a new base cabin user fee is established during transition period for those lots which were appraised between September 30, 1995 and October 11, 2000. Also clarifies that holders who request a new appraisal or the commissioning of a peer review will not have the right to request a second appraisal as provided for in section 33.7.
Section 614	FSH 2709.11, Section 33.81—Use of Appraisal Completed After September 30, 1995.	This section provided direction for situations in which an appraisal completed after September 30, 1995, would be used to establish a new base fee.	No changes in final directive.
Section 614	FSH 2709.11, Section 33.82—Request for New Appraisal conducted under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA.	This section provided guidance and procedures for requesting a new appraisal conducted under regulations, policies, and appraisal guidelines established pursuant to CUFFA.	No changes in final directive, except to make the form for holders requesting a new appraisal when the previous appraisal indicated a base fee increase of more than $3,000 from annual fee assessed on October 1, 1996, and exhibit.

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

CUFFA reference	Forest Service manual or handbook directive	Proposed direction	Final direction
Section 614	FSH 2709.11 Section 33.83—Request for Peer Review Conducted under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA.	This section provided guidance and procedures for requesting a peer review conducted under regulations, policies, and appraisal guidelines established pursuant to CUFFA.	No changes in final directive, except to make the form for holders requesting a new appraisal when a previous appraisal indicated a fee increase of more than $3,000 from annual fee assessed on October 1, 1996, an exhibit.
Section 606	FSH 5409.12, Section 6.53—Recreation Residence Lots.	This section revised appraisal contracting direction by replacing use of the current terminology for appraising ''Recreation Residence Sites'' to ''Recreation Residence Lots,'' to be consistent with the terminology used in CUFFA. This section also directed that the appraisal guidelines for recreation residence lots, included in FSH 5409.12, section 6.9, exhibit 06, Required Specifications for Appraisal of Recreation Residence Lots, be used agency-wide, and that they can not be modified without the approval of the Director of lands. The section required that the appraiser execute an Assignment Agreement, as provided in FSH 5409.12, section 6.9, exhibit 07.	This section containing exhibits 06 and 07 was recorded to a two digit coding scheme (sec. 66) to conform it to the other sections in FSH 5409.12, chapter 60. The exhibits for recreation residences are now enumerated as ex. 03 (previously ex. 06) and ex. 04 (previously ex. 07) respectively.
Section 606	FSH 5409.12, Section 6.9—Exhibit 06.	This section revised exhibit 06, which contains all the technical appraisal provisions and appraisal guidelines enumerated in section 606 of CUFFA. These technical specifications must be included in an appraisal contract for an appraisal conducted by a contract appraiser, and Forest Service staff appraisers must adhere to these provisions and procedures when conducting an appraisal of a recreation residence lot.	As appropriate, replaces the term ''site'' with ''lot'' and makes other minor technical and format edits throughout the exhibit. Section C–2.1(g) is revised to include CUFFA as a source for definitions for recreation residences. The examples of related improvements in Section C–2.2 is revised to be consistent to the definition of related improvements in FSH 2709.11, section 33.05. Section C–2.2(b)(2)(3)(b) is revised by using the term ''market area'' instead of the word ''neighborhood.''

TABLE I.—SECTION-BY-SECTION COMPARISON BETWEEN THE PROPOSED AND FINAL RECREATION RESIDENCE DIRECTIVES—Continued

CUFFA reference	Forest Service manual or handbook directive	Proposed direction	Final direction
	FSH 5409.12, Section 6.9—Exhibit 07.	Exhibit 07, Assignment Agreement, required both Forest Service staff appraisers and contract appraisers to document their intention to comply with the appraisal instructions (ex. 06), the provisions of CUFFA, the Uniform Standards of Professional Appraisal Practice, and the Uniform Appraisal Standards for Federal Land Acquisitions, prior to conducting an appraisal or second appraisal of recreation residence lot.	No changes in final directive.

[FR Doc. 06–2889 Filed 3–28–06; 8:45 am]
BILLING CODE 3410–11–P