

applicant's eligibility for payment or the amount of the payment. Each State shall establish procedures that provide for adequate review by the involved state agency of the concerns of the person aggrieved. The procedures should assure that aggrieved persons may have their applications reviewed by the head of the state agency. The procedures should also provide for an appeals process that can be followed should decisions remain disputed following review by the head of the state agency.

7. Real property acquisition

a. Methods of acquisition. Acquisition of land and water, or interests therein, may be accomplished through direct voluntary purchase, gift, transfer, eminent domain, or other means. The NPS encourages public policies and procedures for the acquisition of real property that are fair and consistent, and directed toward giving the property owner the full measure of compensation authorized by law, promptly, with a minimum of inconvenience, and without prolonged negotiation or costly litigation. Federally-assisted acquisitions shall be guided by the policies found in Title III of the Uniform Act.

- (1) The Federal Government will not obtain a legal right or title to any area or facility acquired with LWCF assistance. The State must have on file satisfactory evidence of the purchase price and a description of the character and nature of the title received by the project sponsor before requesting reimbursement from the NPS.
- (2) Evidence of title, such as a written statement by the State Attorney General, title insurance, or other means considered reasonable and adequate, must also be available to the SLO before requesting reimbursement from the NPS.
- (3) Requests for payment certified by the SLO will be acceptable evidence of the purchase price and that the State has on file all the required documents, including those required by P.L. 91-646.
- (4) A survey may be required by the NPS to confirm the exact location and size of the tract being acquired.

b. State responsibility. The State will have responsibility for providing guidance to appraisers on appraisal requirements for federally-assisted acquisitions, for ensuring appraisals are reviewed by state-certified review appraisers pursuant to the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), and for approving appraisals. The State must certify the appraisals meet the federal appraisal standards as described in below. A certification statement is included in the LWCF Proposal Description and Environmental Screening Form (PD/ESF) for States to certify appraisals and waiver valuations.

NPS will conduct spot check reviews of appraisals as needed and will review the State's LWCF appraisal review process as part of a state program review to assure compliance with the LWCF requirements and federal appraisal standards. The NPS may request

appraisal review assistance from the Department of the Interior's Appraisal Services Directorate (ASD) as needed. When the appraisal review results in substantive concerns as to the adequacy of an approved appraisal, the State Liaison Officer will be responsible for providing NPS (or ASD) with supplemental appraisal documentation or a new appraisal in accordance with the review findings. The value established by the revised or new appraisal will be used as the basis for determining just compensation and matching assistance.

- c. Appraisal standards. The Uniform Appraisal Standards of Federal Land Acquisitions (UASFLA), commonly referred to as the "Yellow Book," shall be used by state and local appraisers in the preparation of appraisals for federal LWCF-assisted acquisitions, donations if used for a federal match, and land exchanges for conversions. Because the appraisals for federal government acquisitions purposes, including federally-assisted acquisitions, are bound by federal law relating to the valuation of real estate, it is necessary to apply the UASFLA as warranted by the conditions of the federal appraisal assignment.

The federal standards (UASFLA) are considered "Supplemental Standards" to the Uniform Standards of Professional Appraisal Practice (USPAP) and are required to bolster the minimum level of documentation and yield compliance with the unique and applicable appraisal methods and procedures that have evolved from federal case law. The UASFLA 2000 edition is available from on-line. USPAP is revised annually and can be found on the Appraisal Foundation's website.

- (1) UASFLA and USPAP. Appraisal preparation, documentation and reporting shall be in conformance with the UASFLA, which are generally compatible with standards and practices of both the appraisal industry and the Uniform Standards of Professional Appraisal Practice (USPAP). However, USPAP compliance alone will not result in UASFLA compliance. The project sponsor must recognize the differences between UASFLA and USPAP and ensure the appraiser meets the higher standards of the UASFLA, except where noted below.

The UASFLA incorporates, by reference, most of the provisions found in the USPAP, however, UASFLA is a more detailed and rigorous standard. The UASFLA does deviate from the USPAP on certain occasions. Therefore, it may be necessary to invoke USPAP's "Jurisdictional Exception Rule" when preparing a UASFLA-complying report. This allows USPAP standards to conform to overriding federal law relating to the valuation of real estate for LWCF federally-assisted acquisition and LWCF Act Section 6(f)(3) conversion purposes. Consult Part D-1 of the UASFLA for a discussion of the minor conflicts between the 2000 edition of the UASFLA and the USPAP in effect as of that same year.

The major difference between the USPAP and the UASFLA is the UASFLA mandated procedure of valuing partial takings by utilizing the "before and after" method of analysis. This method addresses the loss of market value suffered by the large parcel as a result of the loss of the real property rights in question. "Severance

damages” and “special benefits” affecting the remaining real property are automatically addressed through this appraisal method. The USPAP provides no specific guidance with respect to this issue. Lacking specific guidance, most USPAP appraisal reports simply address the value of the real property rights acquired by the grantee and not the overall diminution suffered (or, perhaps, enhancement realized) by the property from which it was acquired. Thus, a landowner, under certain circumstances, may end up “short changed” or unjustly enriched as a result of the lack of direction given in the USPAP in an involuntary or condemnation type acquisition. The reason for this UASFLA requirement is fairness to all concerned parties. Except for appraisal problems associated with Section 6(f) conversion land exchanges, the “before and after” method is required for LWCF appraisals.

Appraisers are obligated to be familiar with the entire UASFLA standard before bidding on an appraisal assignment and/or preparing the appraisal report.

(2) Specific UASFLA policies and guidance for LWCF appraisal problems.

- i. For the purpose of the UASFLA compliance, any appraisal report, whether identified by the appraiser as a self-contained report or a summary report, will be considered as meeting the UASFLA requirements for a self-contained report if it has been prepared in accordance with the UASFLA.

See Section A of the UASFLA for details on data documentation and appraisal reporting standards. All appraisals are to include the required certification statement found in Part A-4. UASFLA contains an *Appraisal Report Documentation Checklist* located in Appendix A and a *Recommended Format for Federal Appraisal Reports* in Appendix B.

- ii. The appraiser's estimate of highest and best use must be an “economic” use. A non-economic highest and best use, such as “conservation,” “natural lands,” “preservation,” or any use which requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value. Therefore, any appraisal based on such a non-economic highest and best use will not be approved for federal land acquisition purposes.

In this same regard, an appraiser's use of any definition of highest and best use which incorporates non-economic considerations (*e.g.*, value to the public, value to the government, or community development goals) will render the appraisal unacceptable for LWCF purposes. (Section A-14 of the UASFLA)

- iii. For acquisitions not associated with Section 6(f) conversions and replacement land, the “before and after” method of valuation is required if the proposed acquisition is something less than the entire ownership. For example, if the proposed acquisition is a 20-acre parcel and the larger property is a 100-acre property, the required method of analysis is to value the 100-acre property in

the “before” condition and then value the 80-acre parcel in the “after” condition. The value of the acquisition is then determined by subtracting the latter value estimate from the former value estimate. Improvements that are unaffected by the partial acquisition, either positively or negatively, need not be valued as long as the appraiser states that to be the case and the property is not to be acquired through condemnation.

- iv. The use to which the grantee will put the property after it has been acquired is, as a general rule, an improper highest and best use. It is the value of the land acquired that is to be estimated, not the value of the land to the government. If it is solely the government's need that creates a market for the land, this special need must be excluded from consideration by the appraiser.” (Section A-14 of the UASFLA).
- v. The UASFLA contains a unique definition of market value (Section A-9 of the UASFLA).
- vi. The UASFLA contains a unique certification statement (Section A-4 of the UASFLA).
- vii. Estimates of “marketing time” and “exposure time” are not appropriate and should not be reported in UASFLA-complying reports. The exclusion of the estimate of “exposure time” may be considered a Jurisdictional Exception to the USPAP. (See Sections D-1 and A-9 of the UASFLA. However, the USPAP version effective July 1, 2006 no longer specifies the reporting of exposure time in Standard 2, “Real Property Appraisal Reporting,” but does refer to the development of an opinion of exposure time in the “Comment” following S.R. 1-2(c)(iv) as well as in SMT-6. “Marketing time” is no longer mandated, to any extent, in the aforementioned edition of the USPAP.)
- viii. Because Section 6(f) conversions are land exchanges, the following policies shall apply:
 - (a) For partial takings, “part taken” appraisals shall be prepared for the subject parcels rather than employing the classic “before and after” appraisal methodology described above. This is necessary to avoid consequential value distortions that would logically occur as a result of appraisement of partial takings within parent parcels of greatly differing sizes. For example, if a park (conversion) property under appraisement is a five-acre tract within a 1,000-acre larger property and the replacement property (non-park property) is a 5-acre tract within an otherwise similar 8-acre larger parcel, an equal value conclusion would be extremely improbable, and such an appraisal procedure might very well result in an “equal value” exchange of a conversion property being several times the size, and perhaps several times the value (if viewed from the perspective of being a stand-alone parcel), of the replacement property.

- (b) In order to determine the highest and best use of the park property, the appraiser is to ignore the actual zoning of the property if the zoning is a non-economic zoning established to recognize the "open space" characteristics of the park or to foster the preservation of the park. In this situation, the appraiser is to determine the most likely zoning that would have come about under the hypothetical condition the park was never created. In so doing, the appraiser will consider likely property uses based upon all germane factors as well as the actual present zoning of comparable, nearby, privately owned properties. Under this scenario, the cost, risk and time associated with obtaining a zoning change would not be appropriate. This procedure is necessary to avoid penalizing the conversion property because it was taken out of private ownership and dedicated to a non-economic use.
- (c) The same valuation method shall be used on both the converted parcel and the replacement parcels.
- ix. The owner or the owner's designated representative must be given an opportunity to accompany the appraiser during his or her inspection of the property. (Section D-14 of the UASFLA)
- d. Appraisal value estimate under \$25,000. If the State determines an appraisal is unnecessary because the valuation problem is uncomplicated and the estimated value of the real property is \$10,000 or less based on a review of available data, the State may unilaterally waive the appraisal and instead prepare a waiver valuation per 49 CFR 24.102(c)(2)(ii). The State is permitted to raise the waiver valuation cap up to \$25,000 provided the acquiring agency offers the owner the option to have an appraisal, and the owner elects to have the agency prepare a waiver valuation instead. Thus, the State may increase the \$10,000 cap to \$25,000 with the consent of the landowner.

The person preparing the waiver valuation must have sufficient understanding of the local real estate market to be qualified, and shall not have any interest, direct or indirect, in the real property being valued for compensation. Further guidance on waiver valuations can be found on the Federal Highway Administration's Website.

- e. Conflict of interest. No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving federal financial assistance, the federal funding agency may waive this requirement if it determines it would create a hardship for the agency. [See 49 CFR 24.102(n)(2).]

- f. Basis for LWCF matching assistance. The project sponsor must secure at least one appraisal by a qualified appraiser or document the value using the waiver valuation method for each parcel to be acquired. Generally, the fair market value (FMV) or waiver value will be used as the basic measure of LWCF assistance on acquisitions. LWCF assistance shall be based upon evidence of this value.

Properly documented costs of severance damage may be matched. Severance damage is the diminution in value of the remaining land due to the particular land taken and is considered to be an inherent part of just compensation.

The LWCF Act precludes using Fund assistance for incidental costs relating to acquisition.

Settlement may occur after the LWCF project agreement has been signed by NPS.

- g. Acquisition by donation. An appraisal prepared according to the UASFLA or a waiver valuation is required for all projects involving the donation of real property or interests therein for determining the federal matching share. For guidance on waiver valuations for real property with an estimated value under \$25,000, see Item "d" above.
- (1) Partial donations/Acquisition at less than just compensation. Only in unusual circumstances (e.g. bargain sales, donations, etc.) will real property be acquired at less than established just compensation as determined by an approved appraisal. For partial donations, documentation must include evidence the owner has been provided with a statement of just compensation. A written statement by the owner that he is making a partial donation is also required.
 - (2) To determine the amount eligible for matching a LWCF project, an approved appraisal is still necessary.
- h. When State request for LWCF assistance is different than appraised value. An appraisal should be an acceptable estimate of property value if competently compiled by a qualified appraiser. However, it cannot be assumed to be an absolute statement of value. The approved appraisal value is the basis for establishing the amount of just compensation offered to the owner (seller) at the initiation of negotiations. The negotiation between a willing seller and a willing buyer will often set a price that is higher than the appraisal, and this market place value must be considered with the appraised value in establishing the reasonable limits of LWCF assistance.

When the State believes the administrative settlement is an adequate indication of market value, yet it is higher than the approved appraised value, a detailed and well documented statement on this difference with all pertinent appraisal documents must be submitted before reimbursement is requested. This statement should explain why the appraisal may not reflect the market value and what steps the project sponsor took to establish the value, and include adequate market data to substantiate the value

conclusion. If the NPS agrees the administrative settlement represents a reasonable estimate of the property, that amount will be eligible for assistance.

- i. Acquisition of less-than-fee interests. In certain instances the purchase of less than fee title may be permissible (see Chapter 3). The acquisition of easements, rights-of-way, etc., will be viewed in the same light as full takings. Documentation of value by appraisals will be the same. The project proposal should adequately explain why lesser interests are to be acquired.
- j. Judicial decisions. When lands are acquired through judicial proceedings, the price determined by the court will be accepted by NPS in lieu of any previous NPS or State approved appraised value.
- k. Responsibility for quieting title or for replacement of properties acquired with defective title. The State is responsible for quieting claims against title and for replacing property found to have defective title with other properties if this occurs after project completion pursuant to the LWCF conversion provisions found in 36 CFR 59. If prior to project completion, the LWCF project may be terminated for cause (see Chapter 7).

E. Equal Employment Opportunity Contract Compliance

For all LWCF grants involving federally assisted construction contracts and subcontracts in excess of \$10,000, the recipient must comply with Executive Order 11246, as amended, and with the regulations of the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor at 41 CFR 60-4. In determining whether Fund-assisted construction contracts exceed this dollar limit, the total amount of the contract awarded rather than the amount of federal assistance shall apply.

F. National Flood Insurance Program

1. Scope. The Flood Disaster Protection Act of 1973 (P.L. 93-234) requires the purchase of flood insurance as a condition of receiving any federal financial assistance (including LWCF assistance) for acquisition or construction purposes in special flood hazard areas located in any community currently participating in the National Flood Insurance Program authorized by the National Flood Insurance Act of 1968. These special flood hazard areas are identified by the Federal Insurance Administration of the Federal Emergency Management Agency.
2. Improvements eligible for flood insurance coverage
 - a. Definitions. For the purposes of the National Flood Insurance Program, the term "financial assistance for acquisition or construction purposes" means any form of financial assistance that is intended in whole or in part for the acquisition, construction, reconstruction, repair or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein. The terms building and mobile home are further defined as any