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ER 405-1-04

CEMP-CR

Regulation
No. 405-1-04

29 January 2016

Real Estate
APPRAISAL

1. Purpose. This regulation describes the general procedures, requirements, guidelines and standards governing all appraisal work undertaken in connection with the real estate assignments and responsibilities of the U.S. Army Corps of Engineers (USACE). The U.S. Army Corps of Engineers may deviate from any policy in this regulation as necessary unless required by law or another binding regulation.
2. Applicability. This Regulation applies to all Divisions and Districts having a real estate mission and real estate responsibilities.
3. Distribution Statement. This regulation is approved for public release; distribution is unlimited.
4. References.
 - a. 10 U.S.C. Section 2662, Real property transactions: reports to congressional committees
 - b. 10 U.S.C. Section 2663, Land acquisition authorities
 - c. 10 U.S.C. Section 2664, Limitations on real property acquisition
 - d. 10 U.S.C. Section 2696, Real property: transfer between armed forces and screening requirements for other Federal use
 - e. 42 U.S.C. Section 4601 (Pub. L. No. 91-646), Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
 - f. 49 CFR 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs
 - g. Department of Justice Title Standards, 2001
 - h. Department of Defense Instruction 4165.71, January 6, 2005
 - i. AR 405-10, Acquisition of Real Property and Interests Therein
 - j. ER 405-1-11, Acquisition

This regulation rescinds ER 405-1-12, Chapter 4, dated 18 December 1998.

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k. ER 405-1-16, Relocation Assistance

l. ER 405-3-10, Military Planning

FOR THE COMMANDER:

Appendix A-References



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CHAPTER 4

Section I. General

4-1. Purpose. This regulation describes the general procedures, requirements, guidelines and standards governing all appraisal work undertaken in connection with the real estate assignments and responsibilities of the U.S. Army Corps of Engineers (USACE). The U.S. Army Corps of Engineers may deviate from any policy in this regulation as necessary unless required by law or another binding regulation.

4-2. Applicability. The provisions of this regulation are applicable to all Headquarters, U.S. Army Corps of Engineers (HQUSACE) elements and all USACE divisions and districts, including contract and staff efforts for civil works and military. This regulation can be used as a guide when providing appraisal services, whether using in-house staff or contract appraisals, for other Federal, state, and local governments pursuant to the USACE support for others programs.

a. Guiding Standards. Except as modified in this regulation, the requirements and guidance in the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA, often called The Yellow Book), and the Uniform Standards of Professional Appraisal Practice (USPAP), current edition, as promulgated by the Appraisal Foundation, will be utilized in preparing appraisals for Federal acquisition purposes. USACE appraisals must also comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended. (42 USC 4601 et seq.), (the Uniform Act), codified in 49 CFR Part 24.

b. USPAP Jurisdictional Exceptions. As addressed in USPAP, the Jurisdictional Exception Rule cannot be used to resolve deviation from agency policy and regulations or other applicable law that may exempt overall application of USPAP. USPAP does not establish who or which assignments must *comply; but agency policy, regulations or applicable law may determine that an assignment is not* required to comply with USPAP. The Jurisdiction Exception Rule is intended for deviation from specific parts of the USPAP standards (while preserving the remainder of those standards) and cannot be applied to the decision to comply with USPAP as a whole. Section D-1 of The Yellow Book provides guidance on instances when Jurisdictional Exceptions may be applicable.

c. Exemptions from USPAP and UASFLA (Yellow Book): Several USACE appraisal assignments require quick and sometimes superficial estimates of value, primarily for internal planning purposes. Some such estimates might be referred to as “rough order of magnitude” estimates, cost estimates, or preliminary value estimates. These types of valuations are also ordinarily not under the purview of 49 C.F.R. Part 24 for acquisition appraisals. USACE valuation assignments that fall within this exemption category include preliminary estimates of value, cost estimates, feasibility reports, gross appraisals, and informal value estimates. Other instances where USACE valuations are exempt from the requirements of USPAP may be found

This regulation supersedes ER 405-1-12, Chapter 4, dated 18 December 1998.

elsewhere within this regulation. Application or use of USACE exemption should be addressed in the appraiser's statement of work.

(1) Importance of Appraisal and Valuation. The appraisal function and appraisal reports materially aid in the planning, acquisition, management or disposal of specified real estate interests. Appraisals and other valuation analyses are indispensable factors in justifying expenditures of public funds, in the disposition of public properties, and in the protection of Federal resources. It is essential that appraisal reports and related evaluations consider and analyze all available data and use logical reasoning and judgment to develop value conclusions.

(2) Deviations for Emergencies and Contingencies. Appraisals and valuations for military contingencies or natural disaster recovery efforts may deviate from the requirements of this regulation. The situation and need should be coordinated directly with the HQUSACE Chief Appraiser.

4-3. Ethics.

a. Applicability. Appraisers must provide due diligence in support of many realty transactions, and must observe ethical standards to preserve the inherent fiduciary responsibility, professionalism, impartiality, objectivity, and independence. The Appraisal Foundation, via USPAP, prescribes ethical standards and provisions, which in part require that the appraiser must not engage in conduct that is unlawful, unethical, or improper. These requirements apply to all appraisers, staff or contract, and other qualified personnel preparing reports for or on behalf of the agency or non-Federal sponsors. One of the most important concepts is that appraisal reports and reviews must not be misleading or fraudulent.

b. USPAP Provisions. USPAP divides the ethics rule into four sections; Conduct, Management, Confidentiality, and Record Keeping. Appraisers and other personnel providing appraisals must comply with these sections to the extent that they do not conflict with Federal law.

c. Impartiality. Impartiality of the value opinion must be preserved. Therefore, under no circumstances will an appraiser (or other qualified personnel performing valuations) be directed to make an appraisal at any predetermined value, or direction of value, or to change his or her opinion of value on any property appraised.

4-4. Appraisals versus Consulting Assignments and Other Evaluations.

a. Appraisal. An appraisal is an "opinion" of value based upon and supported by an analysis of all the factors that materially influence or impact the rights or benefits to be derived from the ownership or use of the property appraised. Appraisals are utilized for many reasons and each report must clearly identify the purpose and use intended for the valuation. Appraisals are perceived to be unbiased, and are not a tool for advocacy.

b. Consulting Assignments. Consulting assignments involve analysis or evaluation, and may or may not include an estimate or opinion of value. Consulting assignments include highest

and best use studies, market studies, marketability studies, feasibility studies, rent studies, absorption analyses, and other such analytical analyses. Consultation may include providing advice and/or recommendations regarding specific courses of action to help solve real estate issues or problems. Often the consultant's objective is to act in the client's best interest. Many of the valuation techniques also apply to the evaluation analyses performed in consulting.

c. **Advocacy.** Reports and analyses for consulting assignments are held to similar quality standards as appraisal assignments to provide clear and informed (not misleading) conclusions or recommendations. Consulting assignments may include advocacy for a position, or a bias toward a conclusion.

d. **Other Evaluations.** There are opportunities for USACE appraisers to become involved in many activities that may be atypical relative to our standard acquisition, management, or disposal actions. Programs and actions such as Enhanced Use Leasing (EUL), specialized BRAC projects, quick disposals, etc., may allow or call for analyses that are not considered a typical appraisal or valuation assignment. District appraisers are required to obtain Division Appraiser and/or HQ Appraiser approval when considering the preparation of non-traditional valuation products.

4-5. **Definitions of Market Value.** Full Federal Funded Projects (projects that are not cost-shared). Under established (Federal) law the criterion for just compensation is the market value of the property at the time of the acquisition. The following definition must be used in appraisals for Federal acquisition projects:

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

b. The "cash, or on terms reasonably equivalent to cash" requirement is important and numerous courts have noted this factor. The terms fair market value and market value are ordinarily considered interchangeable.

c. **Cost-Shared Projects.** For appraisals accomplished by or directly on behalf of a non-Federal sponsor for acquisition and condemnation by the non-Federal sponsor, the appropriate statutory or judicially established definition of market value in the sponsor's jurisdiction must be used. However, if the Federal Government is acquiring or condemning on behalf of the sponsor, use The Yellow Book definition. See Section V (paragraphs 4-43 to 4-46) for appraisals regarding cost-shared credit purposes.

¹ Uniform Appraisal Standards For Federal Land Acquisitions, Page 30, Interagency Land Acquisition Conference 2000, Washington, DC) <http://www.usdoj.gov/enrd/land-ack/>

d. Appraisers must recognize that different guidance applies to disposal actions than apply to acquisitions. General Services Administration (GSA) has the oversight for disposal of Federal property. GSA defines market value as: “The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.” The application of value in use may at times be appropriate for disposal actions. See Section VIII of this Regulation for more information on disposals.

4-6. Highest and Best Use.

a. Basic Concept. Highest and Best Use is identified as the economical use of land or improved property that is physically possible, legally permissible, and financially feasible and results in the highest value. A Highest and Best Use different than current use must be in the reasonably near future. Exceptions may be used for consulting or feasibility assignments, for some sponsor-owned property (for credit) pursuant to cost-shared projects, as well as those identified in paragraph b. below.

b. Unique Programs/Alternate Approaches. Market value is normally based on the property’s Highest and Best Use, and on an “as-is” basis. However, there are exceptions, e.g., for Base Closure “market value” based upon specified uses as defined by the re-use plan (per statutory requirements). For installation privatization efforts or for environmentally contaminated, such as EPA Superfund projects, value may be based on an “as-if” clean or restored scenario. However, the general standard is still the price a willing seller would pay taking into account the current condition. Evolving valuation methods for contaminated or “Brownfield” property can require estimates on the cost to remediate, the stigma from the contamination, and financing risk. Challenged property is traditionally appraised as if uncontaminated or restored and then appraised in its current state to measure the value difference between the two. In some of these unique situations, the current condition may actually yield a negative value with the only value being in the after state. In this situation, it is acceptable to conclude with a negative value conclusion “as is” if appropriate to the scope of the assignment.

c. Hypothetical Condition/Use. By definition it is that which is contrary to what exists, but is supposed for the purpose of analysis. Hypothetical conditions assume conditions (aspects) which are contrary to the known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions, trends; or about the integrity of data used in the analysis.

d. Extraordinary Assumption. An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser’s opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

4-7. Use or Acceptance of Third Party Appraisals. There are times and opportunities when it is reasonable and prudent to utilize a third party appraisal to assist with decision making and

mission accomplishment. One program that utilizes this concept regularly is the Army Compatible Use Buffer zone (ACUB) program, which is authorized pursuant to Title 10, Section 2684a. However USACE policy ordinarily precludes acceptance of an appraisal from a landowner (or landowner's appraiser), as the sole evidence of value or the only appraisal performed, for a tract of land which we will be purchasing from that landowner.

a. In order to ensure reliable independent appraisals from third party sources, the following requirements must be followed:

- (1) Review the assignment or engagement letter between the client and the appraiser.
- (2) Review the assignment specifications, scope or statement of work for that appraisal.
- (3) Review the contract or other such documents that guide that appraisal assignment.
- (4) Ensure that the Army or USACE is identified as an intended user of the appraisal.

(5) Compare the above documents and requirements with our USACE requirements for the appraisal of this property.

b. Perform a technical review of the third party appraisal, to ensure compliance with appropriate UASFLA and/or USPAP requirements and USACE standards. Compare the third party appraisal to other appraisals or value estimates that may have also been performed. Ensure that appropriate arms-length comparables have been utilized. Ensure that appropriate Federal appraisal / acquisition rules have been followed, such as before and after valuation for partial acquisitions, including easements. Ensure that appropriate estate language was used and properly considered within the appraisal. Ensure that the appraiser's certification is compliant with standards. Determine that there is no appearance of bias or advocacy from the conclusions of the appraisal and that the value conclusion is credible and reasonable.

c. Document the technical review analysis and findings in a review report, and retain all the above supporting documents in the property file.

d. Whenever possible, the district review appraiser should be involved at an early point in the process to provide this guidance and instruction in advance, regarding our requirements and expectations.

4-8. Reserved.

Section II. Regulatory Considerations

4-9. Navigational Servitude.

a. Application of "Navigational Servitude." Section B-14 of The Yellow Book addresses some of the peculiarities of acquisitions involving "navigation servitude." It is the relation to

navigation, rather than a stated project purpose that determines whether the navigation servitude should be asserted. The applicability of navigation servitude to a project or property should be determined prior to the appraisal assignment. If servitude appears to include areas that are no longer navigable, consult with the District Chief of Real Estate and the Office of Counsel.

b. Lands above High Water Mark. The valuation of real property required for public use in connection with any improvement of rivers, harbors, canals or waterways of the United States above the normal high water mark of the navigable waters shall be market value based upon its highest and best use. In cases of partial takings, no diminution in the value of any remainder real property shall be recognized and no compensation shall be paid for any damages to such remainder real property resulting from the loss of, or reduction of, access to the waterway. ²

c. Riparian Lands. Appraisers should seek legal advice from their Office of Counsel when valuing riparian lands to be acquired, as well as when estimating project costs for planning purposes when navigation servitude may be applicable. The exercise of such powers may or may not be applicable to cost-shared projects. See ER 405-2-12. Also see 33 U.S.C. §595 regarding the Federal special benefits rule and the partial taking of lands adjacent to navigable waters.

4-10. Tenant-Owned Improvements.

a. Allocation of Value in Appraisal. 49 CFR §24.105 specifies that tenant-owned improvements to be acquired will be valued as to their contribution to the whole property or for their salvage value; whichever is greater. Therefore, the appraiser may need to identify the contributory value of any tenant-owned improvements in the appraisal.

b. Personal vs. Real property. Consult with the Office of Counsel for the legal definition and application of personal property versus real property for certain tenant-owned improvements in each State. Valuation may still be needed for relocation benefit (Title II, The Uniform Act) purposes.

c. Yellow Book Guidance. For valuation guidance, when the property has been improved by the tenant/lessee, see section B-2 of The Yellow Book.

Section B-2 deals with “government-constructed buildings and improvements” during the Government’s occupancy of a leased property. The same scenario holds true for a tenant or lessee who has constructed improvements pursuant to a lease (or outgrant) on government-owned land. The lessee should not be made to pay “twice” for those improvements (first when the improvements are made by the lessee, and second to later lease them from the lessor - who technically does not own them yet). Unless the lease (or outgrant) reads otherwise (or unless

² Please refer to Section 111 of the Rivers and Harbors Act of 1970 (P.L. 91-611) (84 Stat. 1818, 1821, codified at 33 U. S. C. § 595a).

state law provides otherwise), the improvements remain the property of the lessee until abandoned, affirmatively transferred to the lessor, or removed. This condition would generally carry through (unless the lease provides otherwise) to subsequent renewals to the same tenant/lessee. For clarity and disclosure, the report should describe the property as it exists (as-is, or "as improved" by the tenant), and as it would exist absent the tenant improvements. It should specifically identify the tenant-provided improvements, and ordinarily exclude them from value. In the case of renewals, it is critical that the appraiser examines former appraisals on that property, and knows the terms and conditions of the lease (and particularly the original lease). Also see paragraph 4-52 d of this regulation.

4-11. Allocation for Relocation Benefits. 49 CFR Part 24 specifies that when a residentially improved tract being acquired includes more acreage than the typical homesite (in that area), the appraiser must allocate a value for the dwelling and a "typical" homesite in the acquisition appraisal.

4-12. Salvage Value. When an acquisition (or disposal action as applicable) appraisal includes improvements, the appraiser shall estimate the salvage value (see 49 CFR 24 for definition of salvage value) of those improvements, unless the Government intends to retain and utilize the improvement(s).

4-13. Federal Grazing Permits.

a. Taylor Grazing Act Permits. A ranch owner is not entitled to compensation for any value added to fee lands as a result of actual or potential use in combination with Taylor Grazing Act land permits. These are revocable and create no property rights in the holder. See Section B-24 of The Yellow Book. As an example, appraisers should be especially careful in verifying sales which adjoin or are nearby BLM lands leased to the seller and where such adjoining or nearby BLM lands are operated as a single economic unit with the seller's fee land. The verification must determine whether or not the buyer paid a premium because the seller leased the adjoining or nearby BLM land.

b. Exceptions Allowing Payment. Under 43 U.S.C. §315q, the head of a military department may pay the holder of grazing permits for the value of the unexpired term of the permits, provided they are being cancelled for military purposes. The Bureau of Land Management (BLM) also has some specific guidance available, including BLM Instruction Memorandum No. 93-187, dated 29 March 1993.

c. Tenant Improvements. Per 43 U.S.C. §1752(g), the permittee or lessee may be entitled to receive a reasonable compensation for the adjusted value of his interest in authorized permanent improvements placed or constructed (by the permittee or lessee) on lands covered by such permit or lease, but not to exceed the market value of the terminated portion of the permittee's or lessee's interest therein.

4-14. Access for People with Disabilities.

a. Appraisers need to be aware of the general requirements of the laws and regulations governing accessibility for people with disabilities. The cost to add new facilities, modify existing facilities, and remove barriers may affect the value of commercial property. Therefore, during the appraisal process, appraisers need to consider the impacts, if any; complying with regulations such as the Americans with Disabilities Act (ADA) has on appraised values. Appraisers should be aware of the general requirements of the ADA's five titles, especially Title 3, Public Accommodations and Services Operated by Private Entities. Usually, the cost of compliance with the ADA, specifically the cost of remediation for removal or resolution of architectural barriers, will be the cost to cure adjustment for the functional obsolescence that is deducted from the market value. This remedy will be considered a liability to a prospective buyer, and no value or additional income will result from correction of the functional obsolescence. The property's income-generating capacity may also be affected.

b. Architectural Barriers Act of 1968 (ABA). The Uniform Federal Accessibility Standards (UFAS) were developed to present standards for the design, construction, and alteration of buildings in compliance with ABA. DoD policy is that even if a military facility is exempt from coverage under the ABA, compliance with the standards is recommended to the maximum extent that is reasonable and practical. Title 36, of the Code of Federal Regulations, Part 1191 combines the ABA and the ADA regulations into a single rule.

DoD has adopted ABA Chapters 1 and 2 and Chapters 3 through 10 as its standards. In general, worldwide, all facilities designed, constructed, altered, leased, or funded by DoD that are open to the public in the conduct of normal business, shall be designed and constructed to be accessible to persons with disabilities. These standards apply to uses such as all housing, recreation facilities, hospitals, and others. Under Exclusions, the rule lists facilities that do not need to comply with the standards, such as facilities on a military installation or Reserve or National Guard facilities, or portions of these facilities, that are designed and constructed for use exclusively by able-bodied military personnel; unaccompanied personnel housing; closed messes; and maintenance facilities where all work is performed by able-bodied military personnel. The UFAS requires that 5 percent, or at least one unit, of all housing constructed or modified on an installation will be built to accessible standards.

4-15. Contamination and Other Environmental Issues.

a. Recognition. Each appraisal must acknowledge either the presence, or absence, of environmental concerns, including potential contamination whether from CERCLA-regulated material (Comprehensive Environmental Response, Compensation and Liability Act -- commonly known as Hazardous, Toxic, and Radioactive Wastes (HTRW)), non-CERCLA related issues, other dangerous materials or chemicals, ammunition, explosives or unexploded ordinance, and the extent/level of study available on the property or project.

It is the appraiser's responsibility to inquire about and report observations and potential problems including knowledge of historic use. Potential contamination or concerns shall be reported so that additional assessment, investigation, or screening can be accomplished, as necessary. Checklists can be utilized to assist the appraiser in searching for or recognizing potential environmental issues. Environmental analyses or studies may have already been performed, and should be reviewed by the appraiser. See paragraph 4-26(j), 4-29(e) and 4-44 for issues of contamination.

It is not acceptable for the appraiser to simply deny expertise in contamination and state that the appraisal analysis does not consider any such issue. The appraiser must at least identify what has (and has not) been observed, discovered, or otherwise known regarding contamination and environmental concerns.

b. **Appropriate Expertise.** A team approach, whether formal or informal, may be needed. Because the complexities of the legal and technological environmental issues may be formidable. Professional disciplines to be represented on complex assignments might include accounting, engineering, finance, historical research, hydrology/geology, industrial hygiene/toxicology, public relations and legal.

c. **Legal and Regulatory Guidance.** Numerous state and Federal laws and regulations, as well as USACE regulations and policy guidance will impact appraisal efforts. Federal agencies may be required to comply with Federal, state and local regulations, in most instances, in the same manner and degree as non-Federal entities. See 42 U.S.C. 9620a, concerning applicability to the Federal Government. A listing of some of the important guidance for appraisers is included in Table 4-1. AR 200-1 (paragraph 15-6) and AR 405-80 also identify several environmental, historical and cultural laws and requirements. See HTRW Guidance for Civil Works Projects, ER 1165-2-132. Check carefully for the most current versions as this area has undergone rapid change.

d. **Stigma Concerns.** Stigma must be adequately considered and discussed. Stigma may take the form of negative impact to value other than the specific contamination and its associated clean-up costs, whether to a formerly contaminated property, or to a property that may be adjacent to or in proximity to a contaminated property. Guidance on valuation of contaminated property can be found in the edition of "The Appraisal of Real Estate" by the Appraisal Institute and the edition of USPAP by the Appraisal Foundation that are current at the time of the assignment.

e. **As-is versus As-Clean Valuation.** Properties impacted by contamination, requiring remediation measures, will ordinarily require two value estimates, one "as-is" and one "as-clean," unless otherwise required by the appraisal assignment. See paragraph 29e. Whenever an

“as-clean” estimate is made, the report must also clearly disclose the use of either a hypothetical condition or extraordinary assumption as appropriate.

f. Information Retained for Real Estate Audit. When the acquisition appraisal report indicates the presence or possibility of contamination, such information will be extracted and inserted as a part of the property file when the real estate audit is being prepared.

4-16. Reserved.

Section III. Planning

4-17. Cost Estimates.

a. General. USACE is generally required to perform a feasibility report of the potential or proposed project to identify potential solutions and to determine if a project should proceed. If a non-Federal sponsor has been identified, the District should start early coordination on any Lands, Easements, Rights-of-Way, Relocations, and Disposal Areas (LERRD) issues. Cost estimates are utilized for preliminary planning of projects. Cost estimates shall be prepared to the level of detail that the situation warrants, generally considered equal to the effort expended by other functional elements for the project. These reports are considered exempt from USPAP. Cost estimates should not utilize the term appraisal. Efforts for early project formulation for any project will not include detailed real estate information.

b. Use of Cost Estimates. Cost estimates are generally utilized as an initial cost projection for one or more alternative(s) presented in the Project Management Plan (PMP), as well as for Continuing Authorities Program (CAP) projects (See paragraph 4-20). These cost estimates should document and note the information available or relied upon for this stage of planning. Cost estimates should also be used for projects in which the value of real estate (lands, improvements, and severance damages) is not expected to exceed ten percent of total project costs (total cost to implement project). Because Cost Estimates are not appraisals, value conclusions from Cost Estimates are not intended to be utilized in approval decision, project authorization, or funding documents, except CAP projects. If Cost Estimates are used in decision or funding documents, the Project Managers, Realty Specialists, or other decision makers doing so need to confirm in writing that they understand the increased risks associated with using Cost Estimates in this manner.

c. Early involvement. It is important to establish early participation in the planning process, and equally important that real estate cost estimates are provided by Real Estate appraisers. Data development and coordination with the non-Federal sponsor should begin at an early stage.

d. If cost estimates have been prepared and submitted by the non-federal sponsor before District real estate involvement and without written appraiser pre-approval, they must be closely examined to assure sound technical analysis and professional objectivity.

4-18. Continuing Authorities Program.

a. Continuing Authorities Program (CAP) projects. CAP projects encompass a group of ten legislative authorities. Generally, these are small projects, with limited Federal funding, and require a limited product in a timely and cost-effective manner. Approvals for these projects are delegated to the division level. Please refer to ER 1105-2-100, Planning Guidance Notebook. Also refer to ER 1165-2-501, Civil Works Ecosystem Restoration Policy, 30 Sept 1999 3(d), paragraph 17.

b. Valuation. CAP projects generally require a cost-estimate level of effort, determined by the complexity of the project. The real estate valuation effort should be commensurate with the level of detail performed by other elements for each of these CAP programs and projects. Simplified evaluation procedures must be adopted for low risk or low cost projects. Gross appraisals are generally not required. A real estate appraiser should document the data and value conclusions to support the project planning effort via a cost estimate. No review or concurrence is required. Districts will have quality control measures in place to ensure Real Estate coordination and input into the plan. Risk and uncertainty, and cost effectiveness should be in line with the scope and complexity of the project.

c. Complexities. Knowledge of the authorities and credit allowances are important, even at the planning stage. Under Section 14, Emergency Streambank Protection projects, for example, credit is not afforded for lands that are already owned as a part of the facility or structure being protected. Verify the estates needed for the project, and understand the use and utility of the property, and the rights remaining. Publicly owned, or sponsor owned tracts with obligations of public use into the foreseeable future may significantly impact fee value. Value-in-Use may be deemed appropriate. For complex issues, seek advice and guidance from the Division Review Appraiser and the HQUSACE, Chief Appraiser.

4-19. Reserved.

4-20. Reserved.

4-21. Gross Appraisals.

a. Application. Gross appraisals are used to support advanced studies such as Feasibility Studies, General or Limited Re-Evaluation Reports, Special or Detailed Project Reports, Real Estate Design Memoranda, Reformulation Reports, other Civil Works or Military Program decision documents (including Baseline or M-CACES Cost Estimates) or other aspects of project

approval, authorization and funding. These reports are subject to policy compliance review. It is essential that gross appraisals give attention to fundamental issues such as estates, severance damages, benefits, number and types of properties involved, credit policy issues, state rules vs. Federal rules, environmental concerns or impacts, existing Federal or sponsor interests, minerals, timber, and water rights to reflect actual market conditions and anticipated costs. Gross appraisals are considered exempt from USPAP and are generally required for projects in which the value of real estate (lands, improvements, and severance damages) will exceed 30 percent of total project costs (total cost to implement project).

(1) Gross appraisals shall be as complete and descriptive as possible, but there is no requirement for owner contact, and the appraiser may rely on tax records, cursory inspections, or other suitable information for descriptions of improvements, as detailed inspections may not be practical. The extent of any contamination may not be known at this stage. It may be prudent to estimate or conclude values without impacts, as long as clear and complete disclosure is made. It is not acceptable to simply assume no contamination exists, see paragraph 4-16(a).

(2) Gross appraisals should follow the format issued by HQUSACE (CEMP-CR). A tract-by-tract analysis may be relevant for a project when mapping is adequate to depict the property lines, the improvements and the acquisition lines or construction work limits (CWL). An analysis by property types or land classifications would be appropriate for less well defined property lines and for larger ownerships that could be developed or utilized for more than one classification.

b. Support. Each gross appraisal will be supported by analyses of adequate and appropriate comparable sales. Sales will be analyzed to depict land classifications and values, building contribution estimates and other relevant information. Comparable sales should be verified to the extent practical and electronic data sources may be utilized as much as possible.

c. Miscellaneous Items. Other items may be included in the gross appraisal such as the Uniform Act Title II relocation costs, and administrative acquisition costs (both Federal and non-Federal sponsor) as applicable. If the gross appraisal includes data originated from, or estimated by others, those sources should be cited.

d. Incremental Real Estate Costs. Formerly categorized as "Contingencies," these elements of real estate costs must be anticipated and must be supported by narrative discussion. Incremental costs represent anticipated costs above the estimated market value of the tracts themselves (but not the administrative acquisition costs). Incremental cost estimates are intended to take into account the reliability of the data available, the type and scope of the project and the real estate involved.

(1) Line item increments should be considered for elements such as: potential uneconomic remnants, the given level of study definition (and the later refinement of boundary lines due to ownership verification), the hidden or unforeseen aspects of property and improvements due to inability to physically inspect the project (especially with cursory site inspection or no site visit), potential development pressures in the immediate area, potential zoning changes, negotiation latitude beyond estimated market value, potential for condemnation awards and interest, and potential natural resources or minerals within the project area.

(2) Appraisers may consider combining these incremental estimates together depending on the level of study detail. It may be too difficult to itemize each one separately. However, having them separate may foster easier changes to future reexamination of the project or changes in alignment, etc.

(3) The validity of appropriate incremental costs includes explanation and justification. Project-level contingencies will be applied by the district cost engineers through relevant risk analysis, and should not be confused with the incremental costs being estimated by the appraiser. Incremental costs estimated by the appraiser are separate from and in addition to risk analyses developed on the project or portions of the project study.

e. Preparation by USACE or Sponsor. It is preferred that USACE district appraisal staffs prepare the gross appraisal working closely with the non-Federal sponsor. The non-Federal sponsor may provide a gross appraisal if it is prepared by a qualified real estate appraiser pre-approved by the district. See ER 405-2-12. The district appraiser should be directly involved in writing the appropriate Contract Statement of Work (CSOW) or specifications for the assignment. Valuation procedures, requirements and issues must be closely coordinated with the non-Federal sponsor and their appraiser. In either case, the gross appraisal is subject to review and approval by the Government. The district appraiser must be competent to assess compliance with the appropriate state's acquisition/appraisal rules.

f. Keep Separate from the Project Study. The gross appraisal report itself must not be included in the Feasibility Studies, General or Limited Re-Evaluation Reports, Special or Detailed Project Reports, Real Estate Design Memoranda, Reformulation Reports, Baseline or M-CACES Cost Estimates, or other Civil Works or Military Program decision documents due to privileged information, privacy act restrictions, and approval requirements. The value conclusion(s) and other appropriate information from the gross appraisal can be included in those documents to provide support for the overall real estate cost estimate.

g. Use of Brief Gross Appraisal. A brief gross appraisal for planning purposes is authorized for projects in which the value of real estate (lands, improvements, and severance damages) do not exceed 30 percent of total project costs (total cost to implement project). Brief gross appraisals should follow the format issued by HQUSACE (CEMP-CR).

4-22. Updating Gross Appraisals.

a. In order to help ensure that the real estate portion of the feasibility cost estimate is as accurate and reasonable as possible, the district appraisal staff must provide direct analyses and evaluation of the relevant circumstances, project features and impacts, and market conditions as of the time or date relevant.

b. The appraiser should obtain updated project plans and data to determine if the footprint has changed, and if the proposed estates have changed. To the extent practical, the appraiser should reconfirm or reinvestigate market data for the project area. Such project area investigation might reveal new or recent developments, zoning changes or other impacts on value that need to be incorporated into the updated gross appraisal. See ER 1110-2-1302 Civil Works Cost Engineering, dated 1 May 2008.

4-23. General Concepts.

a. For Planning Purposes. If privately owned real property is to be acquired by the non-Federal sponsor, the state rules of compensation (including required techniques, procedures and format) will normally apply and valuations should be based on those state requirements. However, when acquisition on behalf of the non-Federal sponsor (such as condemnation in Federal court) would indicate a potential difference in compensation, that difference must be emphasized, so that everyone is fully aware (and the information can be included in the Real Estate Plan). A summary of the differences between the state and Federal rules of compensation shall be presented along with the estimated effect on value or conclusions of value under each scenario.

b. State Rules vs. Federal rules of Valuation. There are some exceptions to the application of the state rules for valuation. Real property interests owned by a non-Federal sponsor which were acquired prior to the date of the Congressional authorization of a specific authorized project or prior to the date of the Division Commander's approval of the project for CAP projects, will be valued using Federal rules. Acquisition by the Government on behalf of non-Federal sponsors will be conducted in accordance with Federal law, policies, practices and procedures. See ER 405-2-12 for additional information.

c. Existing Federal Project. In general, lands previously included in a Federally funded project are to be excluded from valuation, if the existing estate is adequate. This would apply to existing projects such as levees, floodwalls or seawalls, when the current Federal project involves replacement, reconstruction or enlargement. It also includes Federally funded projects through other agencies. Legal guidance should be obtained before completing an appraisal involving these situations, to assure we approach these problems correctly.

d. Navigational Servitude. Lands subject to navigational servitude will not ordinarily be valued as a part of the project if the real property rights are sufficient for the proposed project purpose(s). Such existing rights must be considered within the appraisal. Seek legal guidance for these situations. Also see paragraph 4-10, and ER 405-2-12.

e. FEMA Grant Program Restrictions. Pursuant to the Memorandum of Agreement with the Federal Emergency Management Agency (FEMA), the construction of flood damage reduction levees (including berms, floodwalls and dikes) on Hazard Mitigation Grant Program (HMGP) funded lands is incompatible with their open space use requirements. Per the MOA, the restriction on levee construction generally does not apply to structures designed specifically for ecosystem preservation, restoration, or enhancement. The non-Federal sponsor of the cost-shared project will not receive credit toward its required contribution for the value of lands, easements, and rights-of-way provided for the Federal project when paid for with HMGP funds.

f. Military Projects. Some military projects may require an initial value estimate during site selection. A gross appraisal may then be needed for preparation of a Lease Planning Report, Real Estate Summary, or a Real Estate Planning Report, once a specific site has been selected. For assignments involving a single ownership, such as an Army Reserve Center, a single appraisal may be prepared and utilized for both gross appraisal and acquisition/disposal appraisal purposes (that report must meet the requirements of a acquisition/disposal appraisal).

g. Contamination. Planning efforts must recognize that appraisals for acquisition purposes, whether for or by a non-Federal sponsor, or for the United States, must recognize any contamination problems and value the property accordingly. These considerations should begin at planning stages and follow through into acquisition. Such formidable issues must not be under-emphasized. Coordination with the planning team will help ensure effective and appropriate consideration of such issues. (See paragraphs 4-16, 4-26j, 4-29e, and 4-44a.) Specifically for cost-shared projects:

(1) For CERCLA-regulated contamination, in some cases the private owner, or potentially responsible party, may be willing to pay for clean-up costs to sell the property in a "clean" condition. In those cases, it is appropriate to appraise the property as though it were clean, if such an assumption is clearly set out in the appraisal and warranted by the expected permanence and effectiveness of the clean up. The appraiser should consider the effect on value for the length of time it will take to decontaminate or remediate the property. Further, any market demonstrated negative reaction or stigma to former contamination must be considered as well. See ER 1165-2-132 and other guidance in this regulation.

(2) For non-CERCLA regulated contamination such as petroleum products, costs for any required actions will (ordinarily) be considered a project cost and will be cost shared as a construction cost. Therefore, LER valuation will be based on market value of the land in the

condition acquired, taking into consideration any contamination that may be present. Similarly, for lands already owned by the sponsor prior to the project, land value shall consider any non-CERCLA contamination that may be present.”

4-24. Reserved.

4-25. Reserved.

Section IV. Basic Appraisal Requirements For Acquisition

4-26. General Requirements for Valuation.

a. Use of an Appraiser. The market value of the pertinent real estate interest in each parcel or tract of real property being appraised will be developed by a competent qualified appraiser preparing an appropriate appraisal report indicating reasonable and supportable opinions of value. The appraisal may be prepared by either staff or contract appraisers. Appraisals will be ordered / contracted only after an appropriate Contract Statement of Work has been developed and approved by the District’s Review Appraiser/Appraisal Team Leader. The appraiser must have demonstrated good judgment and adequate experience (competency) for the particular type of property involved.

b. Role of Valuation. Appraisers are vital to the land acquisition, management, and disposal processes from the early stages of planning studies, through the completion of acquisition and credit allowances, as well as management and disposal actions. Appraisers are likewise essential to Project Development Teams. Appraisal information is needed for feasibility reports, design documents and other decision documents, as well as for credit allowances to the non-Federal sponsor in cost shared projects. Sound valuations are essential for each decision. Appraisals and appraisal reviews are also critical for the system of checks and balances. Further, appraisal reviews (approval or disapproval) are integral to quality assurance and quality control.

c. Sponsor Appraiser. The non-Federal sponsor's appraiser(s) for acquisition appraisals, must be qualified, licensed (for residential property) or certified general, and pre-approved in writing by the USACE Review Appraiser. In no event may an appraiser have an interest in the land to be appraised or a business or family relationship with the owner thereof.

d. Low-value Estimates for Acquisition. For low value tracts, when the estimated market value is less than \$25,000, the District may utilize the appraisal waiver process as discussed in 49 CFR Part 24.

e. Standards Compliance. Tract appraisals are expected to be in compliance with USPAP, as well as The Yellow Book, and 49 CFR Part 24, (except as otherwise exempted herein).

f. Contract Appraisers. USACE may engage the services of qualified and competent contract appraisers and consultants to augment staff capabilities. Subject to Federal Acquisition Regulations (FAR) requirements, preference should be given to appraisers and consultants experienced in the locality and/or the type assignment. Contractors must be state certified (or at least licensed if only providing residential appraisals). See reference: Handbook Real Estate Appraisal and Consulting Contracting Guidelines, U. S. Army Corps of Engineers, Dec 1997.

g. Conflict of Interest. Appraisers and review appraisers shall be disqualified from appraising or reviewing an appraisal on property that they have any interest in or relationship (e.g., family or business) to the owner.

h. Need for a Second Appraisal. Normally, only one appraisal per ownership or tract need be obtained. However, in cases involving controversial appraisal problems, precedent-setting issues, or first acquisition areas of large projects, more than one appraisal of the same property may be obtained. If the filing of a condemnation action appears likely, the district Real Estate office will consult with the Chief Appraiser to discuss whether or not additional appraisals will be required. Ordinarily, cases will be filed based upon the existing approved appraisal, whether staff or contract.

i. Review Expectations. The review of appraisals is considered an inherent government function. Except as otherwise stated herein, each appraisal report, valuation, or analysis will be carefully reviewed by a qualified government review appraiser. Varying levels of approval authority are delegated to review appraisers based on their qualifications.

j. Contamination Issues. Appraisers are not required to be experts in the detection or measurement of hazardous substances. However, they are required to make a reasonable effort to determine whether or not a property is contaminated and to report those findings in the appraisal. The inclusion of a standard disclaimer or statement of limiting conditions pertaining to hazardous substances in the appraisal report does not relieve the appraiser from the responsibility of making a reasonable effort to determine whether or not the property is contaminated. The appraiser must note any observed, suspected or other known instances or indications of environmental contamination. The presence or impacts of such must be appropriately addressed within the report.

k. Current Date of Value. The Uniform Act (Title III) requires that negotiations for any required real estate interest be conducted on the basis of an approved appraisal (except as exempt in paragraph 4-33), which reflects current market value. Any appraisal report with an effective date of six months or more prior to initiation of negotiations with the landowner, or the anticipated date of filing of a condemnation action, should be re-examined and brought up to date, if necessary, to reflect current market conditions. The focus will generally be on the changing market conditions rather than solely on the lapse of time. Typically, if a report is less

than 12 months old, an update report using the original report as a reference is sufficient. If the report is more than 12 months old and the market has experienced substantial change, the scope of the new appraisal will need to be expanded as necessary to conduct an appraisal and produce a report that has sufficient information and analyses to be credible and not misleading to the intended users. A review appraiser may prepare administrative updates, when little or no change in value is evident. By adopting the original appraiser's analyses and conclusions, the update will focus on the changes since the original effective date with proper support for those changes. In this scenario, the update is considered exempt from further requirements of USPAP.

l. **Condemnation Support.** Appraisers may be called upon in condemnation proceedings to corroborate the validity and credibility of their estimates. As such, they must familiarize themselves with basic rules of trial evidence so that their testimony will be readily admissible. Attendance at USACE or DOJ eminent domain seminars is encouraged. As witnesses, appraisers must be prepared, and reports should contain an adequate analysis of all factual data upon which their estimates are based.

m. **Seeking Legal Advice.** Legal advice should be obtained from the Office of Counsel in matters pertaining to legal principles.

n. **Property Owner Contact.** The Uniform Act (Title III) provides that the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property. Before the first visit to the property, the appraiser must make every reasonable effort to contact and invite the owner (or a designated agent or representative) to accompany the appraiser on the field inspection. If personal contact is not possible, a registered letter should be sent to the owner. The appraisal report shall reflect when and how the owner or the representative was contacted, whether or not he or she accompanied the appraiser, and any other pertinent comments.

4-27. Release of Reports.

a. **Exempt from FOIA.** Appraisal reports are privileged information and shall not be divulged to anyone except authorized officials. Appraisals, including gross appraisals, are generally considered pre-decisional documents and subject to the deliberative process. Courts have held that appraisal reports are an intra-agency memorandum within the meaning of Exemption 5 of the Freedom of Information Act (FOIA). Exemptions include internal advice, recommendations, and subjective evaluations pertaining to the decision-making process of an agency as well as records pertaining to the attorney-client privilege and the attorney work-product privilege. The Office of Counsel is the Denial Authority for USACE and will make denial of a formal request for release under FOIA. Contact the Chief Appraiser for assistance if needed. Provide a full report as to the status of the property, the project, the report and the

situation and circumstances involved, including the extent of any specifically privileged or confidential information presented within the appraisal report.

b. Exceptions to Release Policy. Appraisals for the Environmental Protection Agency (EPA) Superfund projects are considered an exception to the above regarding release to the landowner. This exception applies only to appraisals used to establish market values for EPA Superfund acquisition of “non-responsible” landowners. Any proprietary or confidential information must be removed before release. Appraisals from nondisclosure states must be sanitized or redacted to protect the confidentiality of the appraisers’ sources of information. Contract appraisers must be made aware of this policy for release of EPA appraisals.

c. Notice to Owner. The Uniform Act, and 49 CFR §24.102 dictate that a written statement of, and summary of the basis for, the amount of the estimate of just compensation shall be furnished to the property owner. This does not mean that the appraisal report or any part of it should be given to the landowner, but only a summary of the amount and methods of appraisal. See also ER 405-1-11.

4-28. Scope of Reports.

a. Statement of Work (SOW): During the appraisal process, the first step should be the documentation of the essential aspects of the assignment that need to be done in order to produce credible results. This differs from the second step which is the process of actually completing the necessary research and analyses for the assignment. In current practice, both of these steps are often referred to as the Scope of Work, which causes confusion. To preclude further confusion, some agencies, including USACE, are adopting separate terms for the two steps described above, with the term “Statement of Work” or SOW documenting the essential aspects of the assignment at the beginning of the assignment, and the term “Scope of Work” pertaining to the process of accomplishing the research and analyses for the assignment, as defined by USPAP.

Therefore, the appraisal problem should be defined and included in a Statement of Work (SOW) that is developed by the District Review Appraiser/Lead (or Senior) Appraiser at the time of the assignment. The SOW should establish the purpose and intended use of the appraisal; the client and intended users; description of subject property (legal description, ownership); type and date of appraised value; property rights involved (estates); appraisal standards to be followed, such as USPAP (scope of work) and UASFLA; special assumptions and limiting conditions; contact information; and other applicable considerations (due date, controversies). It also includes any other directives as agreed to by USACE and the appraiser. Documented statements of work (SOW) should be done for both in-house and contract appraisals at the time of the assignments.

b. Appraiser Scope of Work: As stated above, the USPAP Scope of Work rule can be confused with the USACE Statement of Work (SOW) used for engaging assignments. The

USACE SOW is developed at the time of the assignment and provides the appraiser with necessary information about the appraisal assignment. The Scope of Work per USPAP pertains to the actions (or scope of work) that are necessary to produce credible assignment results. Please refer to the edition of USPAP current at the time of the assignment for specifics. In the appraisal report, the appraiser must disclose and describe the scope of work that was completed.

c. Report Formats. The format to be used in a given assignment depends on the complexity of the assignment, including, the type of property; the type of problems involved; the type of estate or degree of interest involved; the availability of good market data; and the anticipated value of the property.

d. Narrative Reports. Generally, acquisition appraisal reports prepared for USACE will be in narrative form. Each report will include all essential data that will disclose the purpose, the scope of the appraisal problem and the principal techniques and approaches employed to resolve the appraisal problem. The report must contain all the pertinent supporting data required to sustain the appraiser's final conclusion of value. The appraiser must provide sufficient information so that the users of the report will understand the problem, the analyses, and the conclusion(s), and users will not be misled or confused. The substantive content of the report, not its size, determines its acceptability. Brief appraisal report formats may be used if the value conclusion does not exceed \$50,000.

e. Form Reports. Although narrative reports are generally required, standard form reports, such as the Uniform Residential Appraisal Report (URAR), the Uniform Commercial and Industrial Appraisal Report (UCIAR), the Small Residential Income Property Appraisal Report (Fannie Mae Form 1025), and the Uniform Agricultural Appraisal Report (UAAR) may be considered appropriate in some situations. Use of form reports for the Homeowners Assistance Program is a good example since this program involves residential property only and adequate comparables are generally available. Other formats may be developed for low-value repetitive assignments where the potential for condemnation does not exist.

f. USPAP Appraisal Report Options. At this time, USPAP provides that appraisals be written in one of three report options: self-contained, summary or restricted-use report. This may change in the future as the Appraisal Foundation is considering changing the report options. Appraisers are advised to comply with the USPAP requirements that are in effect at the time of the appraisal. See USPAP Advisory Opinion 11 (AO-11) for additional discussion and comparison of the current report options. The “restricted use” appraisal report is rarely acceptable for USACE assignments as most of the supporting information leading to the appraisers conclusions is not included in the report, but is kept in the appraiser’s work file.

g. Use of Comparable Sales or Rentals. All appraisals that utilize the sales/rental comparison approach should be supported by an adequate number of comparable sales or rentals

of similar properties. A narrative discussion of each will be included. Each sale or rental must be verified, discussed and compared to the subject property within the narrative of the report. A basic part of verifying and confirming any comparable sale is to determine what the seller agreed to sell, and what the buyer agreed to buy, including property rights conveyed, any intangibles such as the seller paying part of the buyer's closing cost or providing favorable financing, and any personal property included in the sale.

h. Attention to Detail. The use of pre-printed narrative sales or rental data sheets is authorized. Care should be exercised to properly relate each sale or rental to the subject in the narrative. Each comparable sale utilized must be properly verified including confirmation of price, terms, conditions, motivations of the transaction participants, financing and any other pertinent information. Use of individual forms is also authorized for tabular exercises, such as used in the "cost approach." Adequate detail must be included to reflect the appraiser's reasoning.

i. Multiple similar parcels. When a number of similar parcels are being valued at the same time, project appraisal reports are authorized. These will comply with Section D-17 of The Yellow Book.

j. Record keeping. The signed appraisal report, data, and materials used to develop the report should be retained in the appraiser's work files for a period of at least five years, or at least two years after final disposition of any judicial proceeding whichever period expires last (USPAP Ethics Rule, "Record Keeping"). These files are particularly important when the reporting method is for a summary or restricted appraisal report. See the latest USPAP standards for additional clarification. Army requirements for retention of appraisals or other documents may differ from USPAP requirements.

4-29. Acquisition Appraisals Format & Content.

a. Format. The report format contained in The Yellow Book, Section "A" (2000 or current edition) can be used for acquisition appraisal reports prepared for USACE. Additional minimum standards and guidance can be ascertained from 49 CFR Part 24 and USPAP.

b. Items to be included. Each report must also include the following items:

(1) The scope of work for the appraisal: A paragraph that identifies the level of investigation and fact gathering undertaken by the appraiser.

(2) The estate(s) being appraised.

(3) Legal description(s).

(4) Observations or findings as to contamination or stigma (or the absence of such).

(5) Qualifications of all appraisers and/or consultants contributing to the report (for all reports that leave the district office).

(6) Documentation of owner contact.

c. Detailed assignments. Appraisal assignments, other than those expressly exempt within this regulation, are considered detailed appraisal assignments and must comply with the provisions of 49 CFR Part 24, The Yellow Book, USPAP, and this regulation.

d. Exposure Time. For Federal acquisitions the definition of Market Value requires the appraiser to consider reasonable exposure time; however, market value should not be linked to a specific exposure time. It has already been taken into account in the sales process of the comparables. The exclusion of exposure time estimations (within the appraisal report) should be identified as a Jurisdictional Exception to USPAP. Also, Reference the Yellow Book sections A-9 and D-1b. For cost-shared projects, consult the state requirements as applicable.

e. Contaminated Property. Two values must be supplied when estimating market value for properties that are impacted or influenced by contamination or related stigma (under most circumstances), or when estimating prospective future values, based on proposed developments, proposed remediation, or stabilized occupancy. The prospective value, or value based on assumed conditions, may be misleading and may be considered invalid by the Department of Justice, therefore, a value for the property "as-is" will ordinarily be developed within the report. Exceptions to providing an "as-is" value, include when the Federal Government has admitted liability for the contamination or hazard and has agreed to bear the costs involved to remediate same, such as the Defense Environmental Restoration Program (DERP), or EPA projects when client requests assumption "as clean." Another exception is covered in paragraph 4-22g. Reports requiring both values under these circumstances shall not be considered simple or non-complicated even if offsetting costs reduce the conclusion to a low value. Appraisal of contaminated property "as clean" is a permitted hypothetical condition under USPAP. The impacts of contamination may be so severe that a negative value is indicated. In this case, there is no requirement to assign a "zero" value and a negative estimate may be appropriate.

4-30. Approaches to Value.

a. Three Standard Approaches. When appropriate, all three of the standard or traditional appraisal approaches,- Cost, Sales Comparison, and Income - are to be used in a fee simple appraisal. However, if it is not practical to use a particular approach due to the type of property being appraised, the appraiser is required to indicate in the report that consideration was given to its use and discuss why it was not used.

b. Cost Approach. In the Cost Approach, the appraiser must document all items of costs for development, construction, utilities, and so forth. The appraiser must fully consider all forms

of depreciation such as physical deterioration, functional obsolescence, and external obsolescence, and justify the methods and factors used in developing the depreciation rates or factors. The source of any cost data, including page and section number, shall be identified in the appraisal report. The principles of substitution and supply and demand are basic to this approach.

(1) The appraiser must estimate the value of the land as though vacant and available to be developed to its highest and best use;

(2) Estimate the reproduction or replacement cost of the improvement(s), including both direct (hard) costs and indirect (soft) costs, and entrepreneurial profit;

(3) Estimate and deduct accrued depreciation from all sources, and;

(4) Add the depreciated reproduction or replacement cost of the improvements to the land value to arrive at an indicated value for the property.

c. Sales Comparison Approach. The Sales Comparison Approach is the most direct approach to market value and is generally the preferred method. It is an application of the principle of substitution.

(1) Sales of similar type properties are analyzed to develop a price at which an equally desirable and similar property can be obtained. It involves the collection and analysis of current sales of comparable properties and the comparison of these sales to the subject property. Since no two properties are identical, the appraiser must consider the market's reactions to any differences and make appropriate adjustments. Support and justification must be given for dissimilarities that have a significant effect on value or sales price. Adjustments may be shown either by a tabular analysis or by a narrative discussion. When adequate data is available, adjustments derived from more sophisticated procedures including statistical or multiple regression analysis may be appropriate.

(2) Sales to government entities (as comparable sales) should only be used as a last resort, and can be considered valid only when thoroughly verified to be arms length transactions, of the same highest and best use, and absent the threat of condemnation. See The Yellow Book.

(3) Gross rent multipliers, net and gross income multipliers and operating expense ratios are sometimes used to compare the income-producing characteristics of properties in the sales comparison approach. The properties analyzed must be comparable to the subject and to one another in terms of physical, location and investment characteristics. Properties with similar multipliers can have very different operating expense ratios and therefore, may not be comparable indicators.

d. **Income Approach.** The Income Approach will normally be used to estimate the value of an income-producing property. The market value of an income-producing property depends mostly on the net income it can produce, or the principle of anticipation. The key to this approach lies in sound development of proper rates and factors, as well as knowledge and use of potential gross income, vacancy rates, collection losses, net income, and operating expense ratios of the subject and competitive properties. The market value may be estimated by developing the expected net income, which is then processed by an appropriate capitalization rate or factor.

(1) The appraiser must have a basic knowledge of the principles and techniques involved and have adequate data to develop rates and factors and properly process the income into an estimate of value. Capitalization rates can often be derived from comparable sales data when sufficient competitive properties are available. The band of investment technique using mortgage and equity components is often used because many properties are purchased with debt and equity capital.

(2) Direct capitalization, yield capitalization (discounted cash flow), and residual techniques are alternative methods used to convert income or future benefits into an indication of value.

e. **Final Reconciliation.** The valuation estimates developed by each approach must be correlated or reconciled into a final value conclusion.

4-31. **Appraisal Certification.** All appraisal reports must contain a current appropriate certification signed by the appraiser. See The Yellow Book for the recommended appraiser's certification statement for appraisals prepared pursuant to The Yellow Book. Refer to USPAP Standards Rule for the format of the appraiser's certification for appraisals conforming solely to USPAP. Current issues of The Yellow Book and USPAP should be used for guidance.

4-32. **Brief Appraisals.**

a. **Use of Brief Appraisals.** Brief appraisal reports for fee and easement are authorized and recommended for valuation situations described in this section, when the total valuation does not exceed \$50,000. Brief appraisals can be prepared as summary appraisals with additional supporting documentation kept in the files. The SOW should clearly identify the assignment, the problem to be solved, and the work necessary to develop credible assignment results. Although no specific format is prescribed, a general format for Short Form Appraisals contained in "The Appraisal Guide," published by the Federal Highway Administration may be used for brief acquisition appraisals. The appraisal report will contain adequate facts and discussions as necessary to support the conclusion.

b. **When Brief Appraisals are Not Appropriate.** Brief appraisals are not suitable for situations involving significant damages, offsetting benefits, environmental, historical,

endangered or threatened species issues, significant highest and best use issues, or any other complex valuation situations.

4-33. Informal Value Estimates.

a. Lead Agency Guidance. As provided by 49 CFR §24, an agency may determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the market value is low based on a review of available data. Also, 49 CFR §24 allows the Federal agency funding the project to waive certain requirements. Blanket waiver authority is granted for acquisition purposes to divisions and districts, to dispense with appraisals, and to use the Informal Value Estimate (FHWA calls this “waiver valuation”) procedure for anticipated values up to \$25,000. Examples of situations that would be considered complicated, or where informal value estimates would not apply, include partial acquisitions in which significant damages to the remainder are evident, properties with environmental contamination or stigma, endangered or threatened species, historical structures, or when condemnation for price/value is considered likely or necessary. Use of informal value estimates for partial acquisitions should be limited to situations when the action is not complicated and it is very clear that any evidence of severance damages are nominal, and can be estimated via simple procedure such as cost-to-cure.

b. Application. Informal value estimates shall be considered for efficiency (including administrative savings of resources) and used when considered to be in the best interest of the Government. The logic and reasoning used to determine the application of the informal value estimate process should be documented for any given property or set of properties. The application of the informal value estimate procedure may also be utilized by non-Federal sponsors for cost shared projects pursuant to Project Partnership Agreements (PPA) and for crediting purposes.

c. Suitability. Caution should be exercised in utilizing this procedure as credibility may be lost if the owner requests a formal appraisal and the estimated value is different than the initial offer that had been based upon the informal value estimate.

(1) A District Review Appraiser shall determine the suitability of waiving the appraisal requirements on those qualifying acquisitions of \$25,000 or less.

(2) Informal value estimates are not considered suitable for filing in condemnation cases. Tracts requiring condemnation will require formal appraisals before submission of any recommendation for filing.

(3) Informal value estimates would not meet the minimum requirements of even restricted use appraisal reports pursuant to USPAP. Contract appraisers may use this process with approval of the District Review Appraiser.

d. Process.

(1) Complete the required documentation for the identified ownership.. Signature of concurrence (absent certification) will be made by a Review Appraiser on each report. For tracts to be acquired, owner contact will be accomplished by the author of the report.

(2) Informal value estimates may be prepared by qualified realty specialists so designated by the District Chief of Real Estate with concurrence of the District Review (Lead) Appraiser.

e. Owner agreement. At the time of the initial contact with the owner (for acquisition), the property owner must be advised that the offer being presented is based on an informal value estimate and not based on an appraisal. If the owner requests that an appraisal be done, USACE must do an appraisal. Other requirements of The Uniform Act apply even though informal valuations may be utilized.

f. Documentation. File documentation is important to justify use of the informal value estimate for acquisition. See the latest format issued by HQUSACE, CEMP-CR.

g. Exemption from USPAP. Informal value estimates are exempt from the requirements of USPAP.

4-34. Partial Acquisitions.

a. Applicability & General Concepts. Many acquisitions require only portions of an ownership or ownership rights necessitating a "partial acquisition." Per the Federal rule, the appraiser is required to estimate the value of the whole ownership (commonly called the larger parcel or entirety) before the acquisition, and the value of the remainder after the acquisition - the difference being the estimate of compensation, except as allowed in paragraph 4-38(b) or when properly following state rules on cost-shared projects. The appraiser is required to allocate value to the part acquired and to any severance damages or special benefits to the remainder. Knowledge of appropriate state rules is essential to appraise or review partial acquisitions for cost-shared projects.

b. Consideration of Uneconomic Remnants. 49 C.F.R. §24 defines an uneconomic remnant as "... a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner."

The determination of uneconomic remnants is generally based on analysis provided in an appraisal. The appraiser need only consider (and explain and describe) the impact of the acquisition on the residual through the before and after process, which may include assessment or application of severance damages. The agency can then determine the validity of offering to acquire the entire property including the uneconomic remnant.

4-35. Easement Rights. Easements are a form of partial acquisition. An easement is a property right that conveys some specified use and enjoyment of the property, which is less than the total fee ownership. Specificity is important since the rights given up and the rights retained will impact the analysis and conclusions of value. The appraiser must adequately recognize the rights to be acquired or conveyed under any easement, and the impact or restrictions on the property's utility and highest and best use. For standard estate language please refer to ER 405-1-11.

4-36. Flowage Easements. The appraisal of flowage easements necessitates the reliance on hydrological and/or geological data identifying the extent of flooding (i.e. flood frequency, duration, erosion, or similar engineering data). The appropriate engineering data, both historical and proposed, will be considered in the appraisal process. The appraisal report should include the assumption that the engineering data is correct. The contour maps and data available will be included in the appraisal report. Another consideration is what, if any, structures are to be allowed in the easement area.

4-37. Other Easement Acquisitions. Many other types of easements, e.g., road, pipeline, construction, borrow, disposal, channel improvement, floodwall, levee, transmission line, navigation, may need to be appraised. In nearly all instances, the measure of value is still obtained by the same process, to identify the amount by which the market value of the ownership is diminished by the imposition.

4-38. Valuation of Easement Estates.

a. Before and After analysis. The measure of compensation for an easement acquisition is the amount by which the market value of the ownership is diminished by the imposition of the easement. The appraisal of the property before the acquisition should be a complete appraisal containing adequate market data to support the estimate. The report should also include a complete appraisal on the remainder property. It should include a full description of the residual property immediately after the acquisition and, ordinarily, a complete set of market data and sales other than those used in the "before" valuation. If the remainder parcel is diminished or increased in value as a result of the acquisition, the appraiser must have adequate support and justification for the change in value. Appropriate reasons could include change in the highest and best use, a loss of access or improved access. The "before and after" method of appraisal derives the value of the easement (including any damages or benefits). See Yellow Book Section B-20.

b. Exceptions.

(1) An exception to the complete before and after approach may be appropriate when the part being acquired is small or inconsequential in relation to the larger parcel, when to do so would impose costly or nearly impossible burdens, and when no damages or benefits are apparent. In such cases, the appraiser would assume the larger parcel to be a logical size and

shape that could be reasonably appraised. If condemnation is necessary, a complete before and after appraisal will be required unless the AUSA handling the case advises otherwise.

(2) Another exception may be appropriate when the acquisition is considered a voluntary transaction, such as with Reserve Centers, or housing sites, with no expectation of condemnation. The grantor is willingly carving out a parcel to sell and would be expected to put the property on the market in a similar fashion.

c. **Offsetting Benefits and Severance Damages.** For partial acquisitions, consideration must also be given to offsetting benefits applicable to the remaining property. A combination of legal interpretation and judicial decisions with regard to such special benefits must be used to determine whether offsetting benefits are applicable. The remainder may be of less value after the acquisition, indicating "severance damage," or more valuable indicating a "special benefit." See Sections B-10 through B-15 in The Yellow Book. If the highest and best use of the part acquired, or of the remainder, is different than the larger parcel, it must be explained and supported.

d. **Support for Benefits or Damages.** The severance damages or benefits should be adequately described or explained in narrative form. Section B-11 of The Yellow Book provides specific guidance regarding appraisals involving partial acquisitions.

e. **Temporary Easements.**

(1) Analysis of temporary easements must include the time or duration of the easement estate. The period of time needed for easement use, such as temporary construction easements, must include the length or duration of the construction period itself, as well as lead time for acquisition and the potential of slippage caused by weather or other unforeseen factors.

(2) Unlike permanent easements, the value of temporary easements may be based on the rental value of the property for the period of the easement. See Section D-10 of The Yellow Book. One exception to the valuation by rental would be when the physical characteristics or attributes of the tract are permanently changed by the use of the property during the temporary period. (For example: borrow areas, staging areas, disposal areas, or temporary construction easements.)

(3) Appraisals for acquisition of easements (utilizing the market approach to value) must identify any direct damage to growing crops, standing timber, or improvements to be removed or destroyed for the project. The damage will be reported separately from the market rent (in the case where market rent is the approach to value) in order to reflect the damage to the above items in the primary rental/easement term.

(4) The terminal condition of the property, pursuant to temporary use such as borrowed areas, disposal areas, or staging areas must be considered as defined by the project design and requirements.

f. Contaminants. When contamination is involved, the valuation of easements should be addressed in the same manner as for fee simple valuations, see paragraphs 4-16, 4-22, 4-26, 4-29 and 4-44.

4-39. Updating Appraisals.

a. Keeping the Value Current. Appraisal reports will need to be brought current, both in terms of date of value, and pursuant to new information or perceived changes in the property or in the market, as necessary to support the project or assignment. Appraisals should be updated as often as changing market or property conditions warrant. Also see 4-26(k).

b. Options. Updates may be provided by either the original author of the report, or by a review appraiser familiar with the property.

c. Support for Update. Any change in the value estimate attributable to market trends or new sales data shall be fully supported by acceptable market evidence. Appraisal updates may expressly incorporate by reference all the background data, market conditions, assumptions, and limiting conditions that were contained in the original report.

4-40. Reserved.

4-41. Reserved.

4-42. Reserved.

Section V. Crediting For Cost-Shared Projects

4-43. Valuation.

a. Appraisal Required. Appraisals are required for crediting non-Federal sponsor LERRD value and costs, except as noted below. If an acquisition appraisal is available it may be utilized for credit purposes provided it has been approved by the USACE review appraiser, considering all relevant factors. The same standards apply for credit appraisals as for acquisition appraisals. Also see ER 405-2-12, and ER 1165-2-131 for additional guidance. See paragraph 4-46a for disapproved sponsor appraisals and subsequent actions.

b. Sponsor Appraiser. The non-Federal sponsor's appraiser(s) for acquisition and credit appraisals must be qualified by license (for residential property) or as certified general, and pre-approved in writing by USACE. In no event may an appraiser have an interest in the land to be appraised or a business or family relationship with the owner thereof.

c. Low-value Estimates. The non-Federal sponsor is allowed to utilize the same criteria for waiver of an acquisition appraisal when the market value is less than \$25,000 (or other limit per applicable state authority) as discussed in paragraph 4-26(d). The files must be appropriately documented setting forth the reasoning behind the property's value estimate. The District Chief of Real Estate, or USACE review appraiser may approve the non-Federal sponsor's informal value estimate(s) used to support the requested credit.

d. Stipulation of Value for Credit Purposes USACE and the non-Federal sponsor may agree to stipulate the amount of credit allowance for real estate rights owned by the non-Federal sponsor made available for the project, and may agree to such stipulation for inclusion in the PPA under some circumstances. See ER 405-2-12, paragraph 8-5.

4-44. Impacts on Value for Credit.

a. Contamination issues. When contaminated lands are encountered, the values for LERRD credit for cost shared projects may be different than values for acquisition purposes. It is generally the non-Federal sponsor's responsibility to assure contamination clean-up and to pay the associated costs (not as a project cost). See paragraphs 4-16(d), 4-26(j), and 4-29(e).

(1) When the sponsor is responsible for clean-up (and their cost for this is not a part of project costs), then the appraisal should be based on the estimated value of the property in a "clean" condition, reflecting, however, any market reaction such as stigma that may accompany a former contaminated site. See Project Management Guidance Letter Number 8, Appraisal of Lands Containing Hazardous and Toxic Wastes on Local Cooperation Projects, dated 5 November 1990.

(2) However, when the cost of the clean-up is to be included as a project cost item (generally non-CERCLA) and cost shared, the property will be appraised "as-is". See CECW-PA Policy Guidance Letter No. 34, Non-CERCLA Regulated Contamination Materials at Civil Works Projects, dated 5 May 1992.

b. Special Projects/Circumstances when Credit may not be allowed, or may be waived.

(1) For Emergency Streambank Protection projects (i.e., Section 14 CAP Projects), the non-Federal sponsor normally will not receive credit for the value of LERs that are part of the tract of land on which the facility or structure to be protected is located. See ER 405-2-12.

(2) Per Appendix F of ER 1105-2-100, the non-Federal sponsor may agree to waive reimbursement for the value of LERRD that exceeds its share of total projects costs for Section 1135 and 206 projects. See paragraph F-20 c (5) of that Appendix F for requirements and approvals necessary.

(3) Hurricane protection and shore protection projects will generally be treated in a manner as to not allow credit for LERRDs when the project provides direct (off-setting) benefits such as prevention of erosion or re-establishment of beaches, i.e., those lands subject to shore erosion that are required for the project. In no event shall credit be allowed for the value of LERRD areas below the ordinary high water mark for rivers and lakes (see 33 CFR §329.11); or below the mean high tide for oceanic and tidal waters (see 33 CFR §329.12). For additional discussion, see CECW-RP Memorandum, Revision to Policy Guidance Letter No. 11, Credit for Lands, Easements, and Rights-of-Way (LER) at Shore Protection Projects, dated 21 April 1989.

c. Sponsor-owned Lands. LER that was owned by a non-Federal sponsor prior to the date of Congressional authorization of a specifically authorized project, or prior to the approval date for CAP projects, shall be appraised using the Federal rules of compensation. Additionally, latitude may be used for lands that are dedicated to public parks or other non-economic highest and best uses where value-in-use may be appropriate.

d. Non-compensable Items. Ordinarily the appraisal will not include compensation for non-real estate items such as goodwill, consequential damages, or personal property. Such items, if required by applicable state law to be paid incidental to the acquisition of real property, may be allowed as credit under incidental costs. See ER 405-2-12 for further guidance.

e. Credit pursuant to Special Legislation. Any project that is authorized by special legislation may also contain special provisions for crediting. Legal guidance should be obtained before attempting to estimate the amount of credit due a non-Federal sponsor on any specifically authorized project(s). The controlling provision in the special legislation should be cited in the report under assumptions and limiting conditions.

f. Navigation Servitude. Navigation servitude may or may not be applicable to a cost-shared project and the resultant LERRD credits. See paragraph 4-10, as well as ER 405-2-12.

g. Other Credit Issues. For other aspects of credit, including donations, recreation features, greater interests, timing, effective dates, and limitations see ER 405-2-12.

4-45. USACE Review of Credit Appraisals. LERRD credit appraisals will be reviewed by a qualified USACE review appraiser, and the non-Federal sponsor will be notified of the results of that review. The district is responsible to see that state rules are properly interpreted, adequately explained and properly applied. The review and approval levels as delegated to district and division review appraisers shall apply. See paragraph 4-82 for exceptions.

4-46. Support for Credit Determinations.

a. Disagreement over Credit Appraisals (subject to specific terms in the Project Partnership Agreement). In the event the district disapproves the non-Federal sponsor's credit

appraisal, the sponsor may obtain a second appraisal. If USACE does not approve the non-Federal sponsor's second appraisal, or the sponsor chooses not to obtain a second appraisal, USACE shall obtain an appraisal, and the market value shall be the amount set forth in the USACE appraisal, if the non-Federal sponsor approves such appraisal. In the event the sponsor does not approve the USACE appraisal, then USACE, after consultation with the sponsor, shall consider the USACE and the sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the market value for credit purposes.

b. Need for another Appraisal. The need for additional appraisal(s) may be unnecessary if the subject tract is low-value and uncomplicated, and the informal value estimate method is applicable. Additional appraisals may also be unwarranted if adequate information exists to stipulate to value pursuant to delegated authority for counteroffer acceptance.

c. Sponsor does not Submit Appraisal. If a non-Federal sponsor does not submit a credit appraisal, the district should document actions taken trying to obtain an appraisal from the sponsor and notify the PM of the sponsor's failure to comply with the PPA.

4-47. Condemnation.

a. Time Period for Review. For lands, easements, or rights-of-way acquired by eminent domain proceedings (other than in Federal courts) instituted after the effective date of the PPA, the non-Federal sponsor must submit in writing to the Government notification of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired. USACE shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by USACE in writing.

b. Disapproval of Appraisal. If, within 60 days, the USACE disapproves the appraisal then USACE and the non-Federal sponsor shall consult in good faith to promptly resolve any issues or areas of disagreement that are identified in the USACE's written disapproval.

4-48. Reserved.

4-49. Reserved.

Section VI. Rental Value Appraisals

4-50. Definitions.

a. Market Rent. The market rent (rental value) of a property is the rent which, in a competitive market, a well-informed and willing lessee would pay and which a well-informed and willing lessor would accept for the temporary use and enjoyment of the property.

b. Market Analysis. A market analysis is defined as obtaining reliable market data from at least three different sources. The sources should reflect or be adjusted to reflect property types, conditions, services, lease conditions and so forth that are considered comparable to the property being leased. The qualified real estate employee must use the market data to estimate a market rental value for the lease and document the file to demonstrate that the proposed action represents a fair market price.

c. Automated Valuation Model. An Automated Valuation Model (AVM) is defined as a computer software program that analyzes data using an automated process, e.g., regression, adaptive estimation, artificial intelligence, etc. The output from an AVM is not by itself an appraisal. The conclusion from an AVM should reflect, or be adjusted to reflect property types, condition, services, lease conditions and so forth, that are considered comparable to the property being leased. The qualified real estate employee may use the AVM data to estimate a value for the lease and document the file to demonstrate that the proposed action represents a fair market price.

d. Quality Assurance. The Division must provide for quality assurance to ensure appropriate quality and internal controls are in place for these actions. To insure that only qualified individuals appropriately exercise the authority granted in this regulation, each Division Review Appraiser will establish qualification and/or training requirements, including on-the-job training as appropriate, and may re-delegate this to the districts. Individuals that don't meet the minimum prescribed training may obtain a waiver from the Division when the individual has otherwise acquired the requisite experience/knowledge.

e. Inlease. Property acquired for Army use by lease. The term is intended to identify the leasing of private property for Government use.

f. Space Measurement. Measurement of space for office leases is critical in preparing valid appraisals. USACE does not prescribe one specific method of determining the area of the space being leased, but it is recommended that local market practice be utilized. Most important is that the measurement is accurate and that the same method is utilized for the subject and the comparables, or appropriate adjustments are made. Lease terms are subject to distinct interpretation in different markets; check for local variations and ask specific questions to foster understanding. Common terms utilized in the industry include the following:

(1) Rentable Area - Includes Usable Area plus the tenant's pro-rata share of common areas but excluding elements of the building that penetrate through the floor to areas above and/or below. $\text{Rentable Area} / \text{Usable Area} = \text{R/U Ratio}$. $\text{Usable Area} \times \text{R/U Ratio} = \text{Rentable Area}$.

(2) Usable Area - Net Usable Area - This is the space that the tenant can lock up at night; it is the space that the tenant actually occupies. This area excludes public corridors and lobbies,

public restrooms, equipment rooms, electrical and janitor closets, elevator shafts, stairways, and other areas not available for tenant furnishings and personnel. The Usable Area of an office is computed by measuring to the finished surface of the office side of corridor and other permanent walls, to the center of partitions that separate the office from adjoining Usable Areas, and to the inside finished surface of the dominant portion of the permanent outer building walls. No deductions are made for support columns necessary to the building.

g. Base Rent is defined as the total rent less utilities, janitor service, and common area maintenance.

h. Independent Cost Estimates. Independent cost estimates (ICEs) are frequently used for estimation of interior alterations for leased space, particularly recruiting facilities. These must be documented and made a part of the file. The use of cost estimating services and software to streamline this process is encouraged.

4-51. Army Economy Policy.

a. Approval may be needed for military inleases (except overseas leases) when the base or shelter rent is expected to exceed 20% of the estimated fee value, or when alterations exceed 30% of the first year's base rental. Refer to ER 405-1-15, Inleasing. An estimate of the fee value of the space being leased may be required for inlease appraisals. A simplified estimate of fee value may be used for this purpose, including capitalizing income into value, and use of tax assessments if the assessment is found to be recent and representative of market value. Such estimates are considered exempt from the requirements of USPAP.

b. For recruiting leases up to \$200,000 annual rent, a fee value estimate is not required. See paragraph 4-53(f).

4-52. Application.

a. Provisions. Provisions of this regulation are applicable to reports prepared for "inleasing" the property of others, and "outleasing" of Government-owned real property. Paragraph 4-59 below, Government-owned Quarters, provides specific guidance for outleasing of quarters to civilians.

b. Market Rent Values. Except as otherwise allowed herein, appraisals for market rent values will be made in accordance with acceptable standards applicable to the particular type of property as well as the general appraisal practices and procedures.

c. Tax Exempt Influence. The market rent will not be influenced by the fact that the Government may not be required to pay taxes on the property. The applicable market rate should be identified regardless of the tax status of the property owner.

d. **Improvements to Leased Space.** Appraisals for inlease renewals (particularly office space), must pay particular attention to improvements previously paid for by the Government. Guidance may be found in paragraph D-12 of The Yellow Book, which states in part, that the property is to be valued as though the Government paid-for improvements do not exist. The purpose is to not pay a second time for those improvements that were previously paid for through either lump sum or amortized payments.

4-53. Recruiting Facilities. Qualified realty specialists who are designated by the Chief of Real Estate in concurrence with the District or Division Review Appraiser, as well as appraisers, may utilize the following criteria.

a. **New Leases with Adequate Competition.** Neither appraisals nor rental valuations are required for the Recruiting Facilities Program leases under \$100,000 annual base rent when adequate competition exists. The district will document files to identify the market information and the market rent conclusions for those actions.

b. **New Leases without Adequate Competition.** When adequate competition does not exist, the designated/qualified real estate staff member may complete rental valuations for recruiting leases under \$100,000 annual base or shelter rental. The designated individual will document the current market information to support the lease action. Certification statements are not required. Concurrence by a qualified review appraiser is required.

c. **Lease Renewals.** Appropriate documentation of the current market information must also be developed for all recruiting facilities lease renewals. Lease renewal rental valuations may be performed by qualified real estate individuals without regard for the rental amount. Certification statements, appraisal review or concurrence for approval are not required. Documentation for lease renewals should identify that the renewal lease rate does not include the improvements previously paid for by the government.

d. **New Leases over \$100,000.** For new recruiting leases over \$100,000 annual base or shelter rent, a qualified appraiser will prepare a brief appraisal. Certification statements, reviews and approvals are required.

e. **Quality Assurance Requirements.** See paragraph 4-50 d.

f. **Army Economy Policy.** A blanket waiver of the Army Economy Policy related to the annual rental exceeding 20 percent of the fair market value of the leased recruiting space is granted. A fee value estimate is not required when the annual base or shelter rental is \$200,000 or less.

4-54. Other Inleasing Actions (other than Recruiting Facilities).

a. **Competition Exists for Simple Lease.**

(1) Qualified realty specialists who are designated by the Chief of Real Estate in concurrence with the District or Division Review Appraiser, as well as appraisers, may use market analyses or automated valuation models (AVM) when competitive bids or offers to lease are received in response to a lease or lease solicitation that does not exceed \$100,000 annual rent and is considered a simple or non-complex lease action. The qualified/designated real estate employee will document the files to identify the competition and the rental rate conclusions for those actions. Certification, review and approval are not required.

(2) A qualified appraiser must do an appraisal for leases exceeding \$100,000 annual rent. A contract appraisal (if needed) will be ordered only after an appropriate Contract Statement of Work has been developed and approved by the District's Review Appraiser or Appraisal Team Leader.

b. Non-competitive lease actions.

(1) Over \$25,000. When adequate competition does not exist and/or a complex or controversial lease action exists, a qualified appraiser will prepare the appraisal. Review and approval and certification statements are required.

(2) Simple lease actions under \$25,000. An appraiser or qualified realty specialist may use market analyses or AVM to support simple (non-complex) lease actions that are under \$25,000 annual rent. Certification, review and approval are not required.

c. Obtain an Appraisal when Warranted. The district may obtain an appraisal under circumstances that warrant greater scrutiny or objectivity. An appraisal will be required to support condemnation.

4-55. Utilities and Services. Utilities and services may not be acquired under the power of eminent domain. In the absence of an agreement or contract, a lessor is not bound to furnish any utilities or building services. If the rental value appraisal is to be used in eminent domain, the value of utilities and services are to be separately itemized and adequately supported. The value conclusion will be a net rental with comparables adjusted appropriately.

4-56. Unexpired Leases. Leasehold and leased fee values will be provided if requested. See paragraph 4-11, "Tenant-Owned Improvements."

4-57. Special Purpose and Rural Properties.

a. Special Purpose Properties. Appraisals to estimate the market rent of hotels; clubs, hospitals, golf courses and other highly specialized properties will include full information on the income capacity of the property under average competent management and under accepted standards of operation for the particular type of property involved.

b. Farms and Rural Properties. Market rental appraisals of farms and other types of rural properties will report the annual market rent. Any crop damages or project-caused property damages will be reported separately from the market rent. This will ensure distinction between damages and rental.

4-58. Industrial Installations.

a. Support for Leasing. Appraisal reports are required to support all leases of industrial installations or portions thereof. It is important that appraisals of operating industrial installations be prepared by qualified appraisers or consultants intimately familiar with the particular processes, production capabilities and related factors bearing on the value of a particular facility.

b. Approaches to Value. The appraisal report will include a detailed inventory setting forth all physical factors pertaining to the land, buildings, machinery and equipment. An adequate discussion of all factors influencing the profitable use of the facility will also be included. In the absence of comparable rentals of similar properties, or other reliable comparative guides to value for temporary use, market rent should be estimated with particular consideration to the following methods:

(1) For outleasing purposes "market value" is defined as the prudent cost of replacement, less depreciation, of only that portion of the property that is readily adaptable or capable of competition with alternative properties, which may be available to or constructed for the proposed tenant. Value in use may be appropriate for these instances. Items of equipment and any portions of a plant that do not directly contribute to the specific use may be eliminated from consideration and the rental value estimated only on items and space actually adaptable for use. The appraiser is particularly concerned with any competitive disadvantages or penalties accruing to subject property by comparison with the alternatives available to prospective users. The market rent estimate should therefore be appropriately modified with respect to adequate allowances for amortization of necessary alterations to be made by the lessee. Other operating disadvantages that might tend, from the competitive viewpoint, to result in increased operating cost or other penalties that might in any way be brought forward in negotiations to establish an acceptable market price must also be considered.

(2) In many lines of industrial enterprise, it may be possible to obtain comparable operating expense ratios with reference to the relation of average annual real estate costs or plant investment charges to the gross annual production. The difficulties of estimating production levels and obtaining sufficiently accurate data as to actual operating expense are fully appreciated. Suggested sources of such information are annual statements of prospective lessees and their competitors. It is believed that this approach to the appraisal problem is fundamentally sound, particularly so when there is an indicated demand for the full capacity of an industrial

plant as originally designed. This method will serve as a reasonable check and balance against return on "market value." It should also be very helpful as a guide to the rate of capitalization in the "market value" approach to the rental problem.

(3) When appropriate, the estimated savings in maintenance, protection, repair and restoration, if any, will be obtained from the using service or other competent authority and furnished to the appraiser preparing the appraisal report.

4-59. Valuations for Occupancy in GSA Space. The basic GSA guidance is found in the Federal Management Regulation at 41 CFR 102-85, "Pricing Policy for Occupancy in GSA Space." Subpart A is "Pricing Policy – General." Subpart D is "Rent Charges" starting at 102-85.115 through 102-85.160. Section 102-85.155 is "What does a customer agency do if it does not agree with a Rent bill." Agencies may request a regional review of the measurement, classification, service levels provided, or charges assessed that pertain to the space assignment without resorting to formal procedures. Formal appeals are limited as discussed in section 102-85.155(c). Other Subparts include the Occupancy Agreement, and Tenant Improvement Allowance. Appraisers should become familiar with the GSA requirements and policies when verifying or challenging rates for office space, antennas or other assigned space. All these items are addressed in the "GSA Public Buildings Service pricing desk guide.

4-60. Government-owned Quarters.

a. Applicability. Rental schedules or valuations for Government-owned quarters furnished to civilian employees will comply with the requirements of OMB Circular A-45, and AR 420-1 (Army Facilities Management) Chapter 3 (Housing Management) Section XV (Establishment of Rental Rates for Housing and Related Facilities), or appropriate Air Force Instructions. The rental estimates will be supported by written appraisal reports or by the use of Department of the Interior's (DOI) Regional Quarters Rental Survey system (Quarters Management Information System – QMIS) reflecting adequate recognition of the items identified in OMB Circular A-45.

b. Appraisal Method. If the appraisal methodology is utilized, Government-owned quarters will be appraised by contract, unless the Division Review Appraiser authorizes the use of a staff appraiser. Regardless of value, these appraisal reports must be post-reviewed by the Division Review Appraiser. Reappraisals of rental quarters (that are used for full-time occupation, and not for periodic, temporary or transient use) are required at least every fifth year. Rental appraisal reports must include an appropriate certification.

c. Survey Method. The use of QMIS is authorized and encouraged as a cost-effective alternative to doing appraisals. Rates developed via QMIS will be reported to the Division Review Appraiser for information.

d. Annual Adjustments. Rental rates will be adjusted annually between appraisals (or surveys) by application of the Consumer Price Index for Urban Wage Earners and Clerical Workers, Rent Series (CPI) maintained by the Bureau of Labor Statistics, Department of Labor, and as further required in accordance with OMB Circular A-45. HQUSACE. Chief Appraiser, will furnish the CPI percentage increase annually to each division. Updates for QMIS developed rates will be provided by DOI. Annual adjustments or updates will be furnished to the Division Review Appraiser, for information.

4-61. Reserved.

Section VII. Outgrants

4-62. Outgrants Defined. AR 405-80 defines outgrant as a legal document which conveys the right to use Army-controlled property. The term outgrant refers to the written documents and the process for defining the terms and conditions of non-Army use of real property (such as the period of use, type and amount of consideration for the use, and any conditions or restrictions of the granted use). Outgrants are a part of the Government's role as landowner, managing its real property holdings and authorizing the use of that property by others. Realty outgrant instruments consist of leases, licenses, easements and permits. Outgrant is a generic term – from the United States to another entity.

4-63. Appraisal of Outgrants.

a. Requirements and Processes.

(1) When competition exists for simple outleases, appraisers as well as qualified realty specialists designated by the Chief of Real Estate in concurrence with the District or Division Appraiser, may use market analyses or AVM when competitive bids or offers to lease are received in response to a lease or lease solicitation that does not exceed \$100,000. Qualified designated real estate employees will document the files to identify the competition and the rental rate conclusions for those actions.

(2) A qualified appraiser must do an appraisal for leases exceeding \$100,000 annual rent. Certification, review and approval are required.

(3) For complex actions or when adequate competition does not exist, a qualified appraiser will prepare the appraisal. Review, approval and certification statements are required.

(4) The district may obtain an appraisal under circumstances that warrant greater scrutiny or objectivity. If contracted, an approved Contract Statement of Work developed by a District Review Appraiser/Appraisal Team Leader must be used.

(5) Quality Assurance. See paragraph 4-50 d.

b. Agricultural Leases. Qualified realty specialists who are designated by the Chief of Real Estate in concurrence with the District or Division Review Appraiser may prepare market analysis to determine market rent ranges in lieu of a formal appraisal for low value leases, when adequate competition and/or long standing history of similar lease actions exist. Where a number of agricultural leases are located in an area, a project appraisal may be prepared which provides a conclusion of value for each land class and proposed use. A one-page supplement can then be utilized for each tract or site to be leased. If utilized, the report should be updated at least every 5 years or sooner if conditions warrant. When the lease calls for services to be performed (such as mowing) in lieu of cash payment, the value of those services should be estimated. See ER 405-1-11.

c. Public Schools. See ER 405-2-12.

(1) Land leases for public schools on military installations require a thorough understanding of the rights and restrictions of the lease terms and conditions. Typically, such leases allow for the facility to be used for public school and closely related academic uses at the high school level or below. They cannot be used for adult education, or for other unrelated meetings or gatherings. Generally, the local school district must build and maintain the school facility and must remove it upon our request. See ER 405-1-80 for additional information.

(2) Lease analysis must take into consideration the condition of the land granted, restrictions on use, oversight and degree of Army control, termination rights, and limited commercial market for the school use granted. The obligations of maintenance, protection, repair, improvement or restoration may tend to offset some or all positive lease value (rent).

d. Valuations for the Army Community and Family Support Center (CFSC). The CFSC provides Morale, Welfare and Recreation (MWR) facilities through the public-private venture (PPV) concept, in lieu of NAF (Non-Appropriated Fund) capital expenditures. Title 10 U.S.C. 2667 requires the Army to obtain market rental for the lands made available. The lease will be completed through a competitive process. The PPV agreement will provide for a profit-sharing arrangement with the CFSC which is not a part of the lease. Valuations for these land leases may be done in brief format (see paragraph 4-32), and are exempt from the requirements of USPAP. The market rental should reflect the terms and conditions peculiar to the lease of the specific property, which generally include restrictions on the use and access to the property, the generally prohibitive (and less public) siting of the facility on an active military installation, and terms and degree of Government control over the leased property. The client must provide specific or typical lease terms and conditions for the appraiser to analyze.

e. Easements on/across Government-owned property. Easement outgrants will be appraised by appropriate methodology. This is not necessarily the same manner as easements for

acquisition, which is by the measure of value that the parent tract or underlying fee is changed in value through the imposition of the easement. Also see ER 405-1-80.

(1) Outgrants such as pipeline and utility line easements lend themselves to the application of going rates per rod (or per foot). OMB Circular A-25 and DOD Instruction 7230.7 prescribe that user charges may be based on competition in open markets, using commercial practices common in the industry.

(2) The before and after method may be appropriate depending on the location and type of real estate, and its highest and best use. Although the impact on the underlying fee will not necessarily be commensurate with potential enhancements to some adjoining properties created by the granting of the easement, the appraisal cannot consider such impacts to an adjoining property owner. That potential enhancement creates other political and policy implications that are beyond the appraisal process.

f. Standard Charges or Rate Schedules. Standard charges or minimum rate schedules utilized for consistency of minor (See ER 405-1-80) outgrants by the district may be used as the basis or justification of value requirement. The District Review (or Lead) Appraiser may periodically estimate values for a variety of types of outgrants issued for similar or identical purposes in order to establish and update a schedule of charges.

g. Tower Site Leases. The value of a site for placement of a tower (for communication antennae or other use) is directly related to the profitability and the market demand for the antenna(s) or tower to be placed on the site. Local market customs should prevail. A brief appraisal (see paragraph 4-32) may be utilized for these assignments. If land is to be leased for the placement of a communication tower (including base station or equipment building), the industry generally approaches value based upon the maximum potential available, i.e., number and types of antennas, dishes, etc, that can be placed-on or attached-to the tower. Estimating market value by analyzing comparable vacant land transactions is not the approach utilized by the industry. Valuation supported by an approved rate schedule (such as Bureau of Land Management's schedule) may be applicable in some market areas. See GSA Bulletin FPMR D-242, Placement of Commercial Antennas on Federal Property, dated June 11, 1997.

h. Communication Antenna and Dish Placement leases.

(1) Wireless communications often require placement of antennae and/or satellite dishes and other communication devices on existing buildings, poles or towers depending on the communication method. Types of wireless uses include broadcast TV, radio, cellular phones, pagers, 2-way radio, satellite, microwave, and wireless Internet. (The technology continues to advance rapidly.) These are often referred to as 'wireless estates' with terrestrial base stations (antenna sites) figuratively serving as 'easements' to these wireless spectrums. They may involve co-location on real property such as building rooftop or an antenna with multiple users.

Location and demand depend on several factors, including population density, terrain, and frequency ranges,

(2) Special purpose wireless telecom sites are difficult to appraise using conventional methods. They contain a mixture of business and realty value (and some equipment as personal property) and market information is closed because there are no brokers as in regular real estate transactions. Industry market customs should prevail. A brief appraisal may be utilized for these assignments (see paragraph 4-32). Valuation supported by an approved rate/rent schedule from other agencies such as BLM, GSA, or the Forest Service may apply in some market areas.

i. Fiber Optic Cable Placement. Leases, licenses or permits for placement of fiber optic cable across Government property should be valued similar to standard industry practice for this type use. Similar to wireless communication, this technology has progressed rapidly, and both the outgrant terms and the associated valuation for those rights must recognize the rights and privileges granted as comparable to rates and terms in the private sector.

j. Exempt Actions. The following actions or activities associated with outgrants are exempt from our typical requirements for a self-contained appraisal:

(1) Banks and Credit Unions. Outgrants for banks and credit unions (and associated ATMs) are regulated by directives and instructions. See ER 405-2-12. Special instructions for appraising proposed outleases for Banks and Credit Unions are also contained in AR 210-135, 10 U.S.C. 2667, 12 U.S.C. 1770, and DOD Financial Management Regulation Volume 5, Chapter 34.

(2) Valuation of “in-kind consideration” for non-excess property under 10 U.S.C 2667. Leasehold valuations of non-excess property leased under authority of 10 U.S.C. 2667 initially require a Market Value estimate. After the value estimate is completed, the appropriate authority may provide cost estimates or values for any in-kind consideration in lieu of cash payment. In-kind consideration could include services such as trash removal, maintenance, snow removal, services related to the business activity, construction of new facility for the Secretary of Defense (even at another location or installation) or any mutually agreeable service provided to the service members. Compensation received for the lease may be a combination of cash and in-kind consideration. Total compensation may not be less than the fair market value (rental) estimate for the leasehold interest.

(3) Concession leases under the Graduated Rental System. The Federal policy governing concession leases on Federal lands is covered under the revised graduated rental system. Appraisals are not ordinarily needed; however, an appraisal may be required as an alternative, or for an appeal of the rate under special circumstances. See ER 405-1-80.

(4) Leases for mobile home spaces. See AR 420-1 Chapter 3, Section 3-121, for guidance on mobile home placement on Government land, and see AR 405-80.

(5) Minor Outgrants. Those outgrant valuations that are low value, and can utilize the standard charges or minimum rate schedule process.

4-64. Reserved.

Section VIII. Disposal

4-65. Appraisals for Disposal Actions.

a. General Considerations. Disposal of Federal property is guided by GSA, and is not subject to the same appraisal guidance utilized for acquisition activities. Value in Use, rather than Value in Exchange, might be more appropriate for some actions. Agencies may consider the value of an easement release to the acquirer, as well as the diminution to the government's property by reason of the encumbrance, per discussion in paragraph B-20 of The Yellow Book. Seek legal advice as appropriate from the Office of Counsel, and check with the latest GSA guidance as well as ER 405-1-90.

b. Disposal of fee-owned land or easements. Guidance can be found in ER 405-1-90, as well as the Federal Management Regulation (FMR), 41 CFR 102-75 for disposals of fee-owned land or easements, which are determined to be surplus to requirements of the Federal Government.

c. Abandonment or Donation to Public Bodies. Guidance for this type disposal is found in 41 CFR 102-75.

d. Disposal to Owner of Servient Estate.

(1) In accordance with the FMR, easements may be disposed (or released) to the servient estate when the continued use, occupancy, or control of the easements is not needed for the operation, use or maintenance of property controlled by USACE. The FMR and ER 405-1-90 also indicate that the disposal agency may determine whether or not to charge for this disposal, depending in part on the acquisition cost of the easement. If a value is needed, consideration may be determined by "before and after valuations" (i.e., appraising the market value of the fee subject to the easement, and then as free and clear of the easement). The value of an easement to be released is not zero simply because the government no longer has a need for the easement, nor is it zero because there is no commercial market for the easement estate. Appraisers may consider any enhancement of value to the servient estate, such as an improved or more valuable highest and best use of the property in this new after condition.

(2) An alternative approach, when the before and after approach has inadequate or incomplete data available to recognize a difference in value, is to value the contribution of the footprint of the easement area to the whole, and adjust for the extent of rights being released versus those remaining, if any.

e. Economic Development Conveyances (EDC). Title XXIX of Public Law 103-160 provides special guidance and procedures for valuing and disposing of base closure properties. The implementing regulations can be found in 32 CFR, Parts 175 and 176, the DOD Base Redevelopment and Realignment Manual (BRRM) provides instructions for valuation and disposal via EDC.

f. Timber Harvesting. The use of district staff foresters, or a local installation forester where available, is encouraged to perform the timber cruise and valuation, when economical and expeditious for timber sale activities.

g. USPAP. Unless otherwise specified by law or policy, appraisals are generally performed for disposals. Appraisals performed for disposal of Federal property are to be conducted according to the Uniform Standards of Professional Appraisal Practice. (USPAP). An appraisal will be based on the market value of the property. Market value is a term of art that has been developed by courts to address the requirement under the Fifth Amendment of the United States Constitution to pay just compensation for property taken for public use. Refer to USPAP for a discussion on the use of market value.

4-66. Encroachments, Special Legislation and Negotiated Disposals.

a. Encroachments. Appraisers preparing reports for resolution of encroachments should first seek legal and policy guidance from the Office of Counsel.

b. Special Legislation. Appraisals for disposal actions supported by special legislation must be appraised in accordance with any specific requirements of that legislation. The situation and requirements should be coordinated directly with the HQUSACE or Division Review Appraiser.

c. Negotiated Disposals. Contract appraisal reports are ordinarily required for negotiated disposal actions. Additional guidance for appraisal for negotiated disposal actions can be found in 41 CFR 102-75.

4-67. Reserved.

4-68. Reserved.

Section IX. Appraisal Of Other Interests

4-69. Minerals.

a. Value to be Included. The value of subsurface minerals must ordinarily be included or accounted for in the appraisal report, when appraising fee simple estate, even though the mineral(s) may be owned by someone other than the surface owner. If mineral interests are not being acquired, a statement will be made concerning the existence or non-existence (perhaps inferred or proven reserves) of mineral deposits, especially those having a commercial value.

b. Subordination. Many USACE projects have easements allowing collateral mineral production (coal, oil, gas, etc.). Most of these mineral or mineral leasehold interests are subject to the right of the United States to operate and maintain the project. These restrictions are called "subordinations" and are a reduction in the real property rights of the mineral owner. A subordination estate is a partial acquisition, and as such, requires a traditional "before and after" appraisal unless the acquisition is considered to contribute only nominally to the larger parcel. See The Yellow Book and paragraph 4-38(b) of this regulation.

c. Use of Expert Opinions in Overall Appraisal. In those instances when minerals are held separately in large blocks underlying several individual surface tracts, a statement to this effect should be included and the plan for appraising the mineral estate identified. In all areas where the mineral interests (including surface improvements, which contribute directly to the production of minerals) are estimated to contribute significantly to the fee estate, an appraiser who is qualified and experienced in valuing the type(s) of minerals involved should estimate the subsurface mineral value. If the fee appraiser lacks sufficient knowledge to address the mineral estate, just as in any other appraisal assignment, the services of a specialist or mineral valuation expert (e.g., mining engineer, petroleum engineer, or geologist) must be obtained. The surface appraiser should adopt the conclusions of the mineral appraiser and consider the information when making adjustments to comparable sales in arriving at a final value conclusion for the interest to be acquired. The appraiser who is to testify (if condemnation is necessary) must include all contributions to value in the appraisal, including mineral values.

d. Stand-alone Mineral Appraisal. If a separate mineral appraisal is obtained, it should be prepared first and furnished to the surface appraiser for incorporation into his report. The value of the property is not necessarily the sum of the value of the subsurface estate plus the value of the surface estate. The production of the minerals may have an adverse effect on the utilization of the surface. The removal of certain minerals (or the mining activity) may destroy surface utility; therefore care must be taken to avoid duplication of value. Similarly, surface estates being acquired may impact the subsurface, even when the intent is to leave minerals outstanding in third parties (as in subordination.)

e. Minerals left Outstanding. On many USACE projects, minerals may be left outstanding until extraction is completed or reserves exhausted (e.g., oil and gas wells), after which the rights become those of the United States. This is a form of subordination, used when such practices are compatible with project purposes. With proper planning, it permits prudent development of the natural resource. The appraiser may be required to study impacts of different estates on the same properties, and explain multi-faceted highest and best uses in the report, and testify in Federal court in defense of those opinions.

f. Seek Assistance. In the event that subsurface or mineral valuation is unfamiliar to the division or district, the HQUSACE, Chief Appraiser, or another Division Review Appraiser with such experience, should be contacted for advice and recommendations.

4-70. Water Rights. In some parts of the United States water and water rights are critical issues. Appropriative water rights, as opposed to riparian water rights, are generally transferable. The water rights, per se, are intangible. A water right is a usufructuary³ right, a right to the use of the water only. It is generally the right to divert a specific quantity of water from a given source or supply, provided the amount available is in excess of that required by all previously vested interests still in existence. Appropriative rights generally relate to a specified quantity of water and duration of use as long as the right continues to be exercised properly. When land cannot be used advantageously without the water right, the right is an appurtenance. Water rights, particularly in the western states, are subject to state regulation and supremacy. Seek legal advice from the Office of Counsel when encountering water rights issues.

4-71. Timber.

a. Non-merchantable. When the land being appraised has only young trees or timber not of merchantable size (minor share of value), the timber value may be included or incorporated into the value of the land, generally by direct comparison to the sales used.

b. Merchantable Timber. If the property contains a substantial amount of merchantable timber, a professional forester or timber expert will make a timber cruise. Merchantable timber will be classified in the appraisal according to species, type and range of size, quantity, unit value, and total value. A discussion of logging, haulage, sources, and market conditions will be included. The total value of timber shall be the amount by which the timber enhances the market value of the property.

c. Timber Cruise. Care must be exercised in the use of separate timber estimates for appraising timberland, to avoid "doubling up," or including the timber value twice. When a

³ Usufruct: the legal right to use and enjoy the advantages or profits of another person's property

timber cruise or estimate is used, comparable sales of recently cut-over timberland should be used to support the contributory value of the land. When such sales are not available, care must be utilized to extract the timber value from sales of timberland. The optimum situation would be to use sales that have also been cruised. Prevalent, accepted local methods for measurement of merchantable timber should be used and explained in the report.

4-72. Growing Crops.

a. Applicability. Valuation of growing crops may be necessary in those cases when possession of the cropland is required prior to the normal harvesting period. When the Division or District Commander has determined that the landowner or tenant cannot be permitted to harvest the crops, they will be appraised as separate property items. Severed crops are personal property items and should be addressed under Title II, Relocation benefits.

b. Crop Identification. The crop appraisal will identify the crops by type, number of acres, estimated yield per acre taking into account all hazards, the unit value, gross market value at maturity based upon current local prices for the commodities less cost of bringing to maturity, harvest, and delivering to available markets. The expected harvest period will be reported, together with other pertinent information impacting the crop(s) and the land availability for the project.

c. Perennial Crops/Permanent Plantings. Valuation of perennial crops must account for the income loss, and re-establishment expenses, as appropriate, based upon the age and remaining life of the particular perennial crop. Permanent Plantings may be accounted for in comparable sales used in a valuation. Care should be taken to address the value of permanent plantings included in comparable sales.

4-73. Reserved.

4-74. Reserved.

4-75. Reserved.

Section X. Contracting

4-76. Contracted Reports and Services.

a. Purpose. Contracting provides a valuable tool to augment real estate functions and increase effectiveness, flexibility and efficiency. Use of contracted reports and services is encouraged when advantageous to the Government. The Federal Acquisition Regulations (FAR) system and associated requirements form the basis for procedures and authorizations in contracting.

b. **Selecting the Best Qualified.** It is important to obtain the contract services of the best-qualified and available appraisers within the rules governing the contracting process. Price is an important factor, but equal or more important factors include capability to perform each assignment, such as appraisal experience, education, professional reputation, court experience, and demonstrated competency. The concept of best value should always be reviewed with your Contracting Officer or representatives as a part of the process to obtain quality products. Best value may not always be the lowest bidder, if that bidder cannot meet the criteria or requirements for the assignment.

c. **State certification.**

(1) The Yellow Book and 49 CFR §24.103 require that all contract appraisers must be state certified (or licensed as appropriate). For larger and more complex assignments, districts are encouraged to coordinate with their division to obtain an adequate list of qualified appraisers.

(2) The contractor may utilize the services of qualified non-licensed or non-certified persons to assist in the performance of the contract. However, all properties must be inspected and each report signed by a licensed or certified appraiser (as required by the assignment) as the principal appraiser.

d. **Pre-positioning Contracts.** Each district office may request the contracting office to establish one or more contracts to improve timeliness and response when unexpected assignments or requests for appraisals are received. Indefinite Delivery Contracts, or Blanket Purchase Agreements are examples that offer advantages for appraisal services. When anticipating large projects such as Base Closure activities, an Indefinite Delivery Contract may be the type of contract to use for analyses such as land planning and re-use programs, Highest and Best Use studies, valuation analyses, and similar studies, or for Homeowners Assistance needs.

e. **Complex Assignments.** If the valuation/consulting problem is complex, care should be taken to ensure that all qualified individuals and firms regardless of size, are encouraged to respond. Given the complexity and magnitude of some projects, the widest solicitation may be the most prudent. Small business, and small disadvantaged business participation is mandatory in the solicitation process if the rule of two can be established (this means that there are at least two businesses qualified to perform the work). Soliciting only from businesses with classification codes of Business Consultant or Real Estate Contractor, may not yield the most qualified respondents.

f. **Append the Contract Statement of Work.** The statement of work from the contract, as well as other value impacting requirements of each contract, should be appended to the appraisal

report, or attached with the review when the report must leave the district for review and approval.

4-77. Department of Justice Coordination. The selection of contract appraisers or consultants who may be required to give expert testimony must be coordinated with the Assistant United States Attorney (AUSA) in the Judicial District where the testimony will be given (or HQ DOJ, depending on who is handling the case), prior to finalizing such appraisal contract. The US Attorney's office must also approve the contractor's per diem fee for preparation and court testimony. When agreement cannot be reached with the AUSA as to the selection of the appraiser(s), a complete report will be submitted to HQUSACE, CECC-R, for resolution with the Attorney General's office.

4-78. Interdepartmental Services. Division Commanders are authorized to arrange for interdepartmental services of qualified specialists in the regular employ of other USACE offices, or other Government agencies, in connection with special problems or issues such as those concerning minerals, water rights, timber, or other natural resources. Division Commanders are further authorized, at their discretion, to re-delegate this authority, or any part thereof, to District Commanders and to their Chiefs of Real Estate.

4-79. Contracting Process.

a. Government Cost Estimate. A Government cost estimate will be prepared by a staff appraiser with experience and qualification in the valuation of real estate interests. The estimate will be developed with due consideration to the relative skill and ability required in solving the appraisal problem, the appraiser's time and expense required to complete the assignment, and associated administrative cost. This estimate will be used in determining the reasonableness of the contract appraiser or consultant's fee from proposals or bids.

b. Statement of Work. A Contract Statement of Work (CSOW) or set of specifications will be prepared by a staff appraiser with experience and qualifications in the valuation of real estate interests. The CSOW will contain specific information regarding the assignment. The CSOW should contain the minimum standards required for the assignment, such as compliance with The Yellow Book, USPAP, or the appropriate state appraisal guidance, as well as detailed information about the number of parcels, improvements, land areas, mapping, and the real estate interest to be valued. The need for an In-Progress Review (IPR) should be included in the CSOW for most assignments.

c. Technical Evaluation. Staff appraiser(s) (either individually or as part of a panel, as appropriate) will prepare and provide to the Contracting Officer, the technical evaluation factors to be considered in the solicitation and award of any appraisal contract, which requires competition. A staff appraiser will also participate in the review of the qualifications and proposals of the prospective contractors in order to rate the qualifications of each candidate.

d. Contracting Authority. Contracting authority rests within the Contracting office. Persons who have not been so designated or authorized are not permitted to contact or solicit price quotes for any purpose, including "planning purposes." Circumvention of established procedures to expedite an action or to give a particular offeror or vendor an advantage over others is strictly prohibited.

e. Proper Planning. Planning and preparation are key elements to successful utilization of contracting appraisal services to the fullest extent.

(1) Lack of planning, for instance, does not constitute justification for sole source acquisition, or emergency contracting. The FAR specifically allows identified litigation support as an authorized purpose for sole source contracting. See 48 CFR 6.302-3(a)(2)(iii) and (b)(3)(i) and (c). Proper documentation including justification and approval are still required.

(2) All real estate planning schedules must take into consideration the time required for the contracting process.

f. Forms and Clauses. When contracting for appraisal or consulting reports, the appropriate contract forms and clauses as set forth in the contracting regulations will be used. An outline of the qualifications of the contractor will be included in the final contract assembly.

4-80. Reserved.

4-81. Reserved.

Section XI. Appraisal Review

4-82. Procedure.

a. Necessity of Review. Review of real estate appraisals is an inherently government function and is vital to the success of the USACE real estate mission. Every appraisal (except as exempted herein) must be reviewed by a qualified Government review appraiser (reference 49 CFR §24.102d and §24.104). The review process provides an independent validation of the appraisal.

b. Purpose of Review. Appraisal review ensures that the information, data, and analyses developed by the appraiser substantiate the estimated value. The review function, in addition to providing quality control and quality assurance, also serves as a means of (1) resolving differences that might be found in two or more individual appraisals of a single property, (2) maintaining consistency in appraisals for the various properties in a project, and (3) ensuring that the report meets the scope and specifications, including those required by contract.

c. Reviewer's Perspective. The review appraiser should be sufficiently familiar with the property and market conditions.

(1) Field reviews should be conducted as necessary and appropriate to support the assignment and/or program. Data contained in the report should be re-verified as necessary and appropriate to support the review action.

(2) The reviewer is expected to examine the completeness of the analyses, the appropriateness of the data, the methods and techniques employed, the adequacy and relevance of the data, the propriety of adjustments, the reasonableness and validity of analyses, opinions and conclusions, and the consistency within the report and with other known information about the property or market.

d. Review Report. The typical review is a detailed narrative certified, signed and dated by the review appraiser.

(1) Extraordinary assumptions and hypothetical conditions considered by the appraiser should be restated in the review. The review must indicate the effect on value of those conditions and/or assumptions, and explain why they are reasonable and appropriate.

(2) Technical review reports will be prepared in accordance with The Yellow Book (Section C), 49 CFR §24.104 (only if the appraisal under review is performed in accordance with the UASFLA), and USPAP Standard 3 (only required if the appraisal under review is performed in accordance with the USPAP.)

(3) Ensure that any severance damages reported by the appraiser are reiterated clearly in the review statement. Severance damages for the landowner are treated differently for tax purposes.

e. Use of Form Review Reports. Although narrative reviews are preferred, the use of form reviews such as the Standard Appraisal Review Report (S.A.R.R.) are often appropriate, including review of credit appraisals for cost-shared projects. The S.A.R.R. allows side-by-side comparison of up to three appraisals, before and after values, or of an original report plus updates, and may be used to supplement a narrative review.

f. Multiple Appraisals. If more than one appraisal is obtained for an ownership, each report should be reviewed by the same review appraiser, when possible. Each report should not be reviewed in a "vacuum;" but should be reviewed in the context of one another. A copy of each appraisal report should be submitted for review regardless of variances in opinions of value. The reviewer can discuss both appraisals in one review report, or write individual reviews.

g. Prohibited Practices.

(1) The use of “rubber stamped” approval or one-line "Reviewed & Approved" are not acceptable procedures. The requirements specified in USPAP Standard 3 should be followed unless the appraisal assignment is exempt, as allowed within this regulation.

(2) Alterations or additions will not be made to an appraisal report without the concurrence of the appraiser who signed the report. A review appraiser cannot change the value without becoming the appraiser of record and meeting USPAP standards, nor approve an amount other than the appraiser's final conclusion of value. Pen and ink changes for simple typos or rounding errors that do not change the value are allowed.

(3) A review appraiser is not to review any appraisal report of a property he or she has appraised within the past two years. The report must be assigned to another reviewer. Gross Appraisals are exempt.

(4) A reviewer shall not review an appraisal report prepared by his or her supervisor.

(5) Realty Specialists are not authorized to perform technical appraisal reviews.

h. Miscellaneous Review.

(1) Appraisal reports obtained by the Department of Justice, other agencies, or clients, and submitted for USACE review, are to be reviewed under USACE requirements.

(2) Project Partnership Agreement's (cost-shared projects) generally require that appraisals submitted for condemnation purposes be reviewed and approved by USACE no less than 60 days prior to filing the DT. Appropriate resources must be committed to accomplish that task.

(3) Appraisals submitted for credit purposes (for cost-shared projects) may be reviewed in a more cursory fashion (consistent with the level of value and complexities of the assignment/property at-hand), although this should be more than an administrative review. This assumes that an appraisal was approved for acquisition purposes, and that information is available for comparison. A properly reviewed and approved (by USACE) acquisition appraisal could be used for credit determination in some instances.

(4) Appraisal of Government-owned quarters as well as Quarters Information Management System (OMIS) generated rent will be reviewed and approved/disapproved by a District Review Appraiser. These rents will be post-reviewed by the Division Review Appraiser.

i. Exceptions.

(1) Cost estimates for feasibility studies, and other reports not considered appraisals (such as Informal Value Estimates per paragraph 4-33) are exempted from a review.

(2) Cost estimates or preliminary studies that serve as working documents during the plan formulation stage solely within the district and division, i.e. not for support of project approval, authorization, or funding, need not be submitted to HQUSACE for review and approval. Copies will be forwarded to Division Review Appraiser, if requested.

4-83. Reconciliation of Appraisal Reports.

a. Reviewer disagreement with the Appraisal Product. If a review appraiser does not agree with the value conclusion, or with the support and documentation provided by the appraiser, the following action should be taken:

(1) Attempt to reconcile differences with the appraiser. If agreement is reached, the appraiser should make appropriate changes in the report.

(2) If, in the opinion of the review appraiser, after honest and open discussion with the appraiser, the value estimate is not adequately supported, and/or there are other adverse errors or omissions that impact the value conclusion or the integrity of the report, the reviewer will disapprove the report.

(3) If the reviewer forms a different opinion of value, based upon additional data, that conclusion must be clearly and credibly supported. The reviewer becomes the appraiser of record responsible for all information supporting his or her conclusion of value. The new opinion of value must be reviewed and approved.

b. Review of appraisals provided by the Cost-shared Sponsor. When the Government has not contracted for the appraisal, and the reviewer disagrees with the appraisal report or requires additional information, the reviewer should not contact the appraiser directly without the consent of the sponsor or client who submitted the report. Proper coordination is essential.

c. Need for another Appraisal. When differences of opinion cannot be resolved, an additional appraisal will ordinarily be obtained.

4-84. Reserved.

4-85. Reserved.

Section XII. Reviewer Delegations And Qualifications

4-86. Delegation Process.

a. Delegation to Division Review Appraiser. The Chief Appraiser, HQUSACE, will delegate to the Division Review Appraisers (by name and level of experience), the authority to approve or disapprove appraisal reports in the amounts stated in the delegation. The Division

Review Appraiser may re-delegate this authority to individual District Review Appraisers as appropriate, subject to restrictions and limitations contained in the primary delegation.

b. Delegation to Individuals. All delegations of appraisal review authority will be to an individual by name, not to a position, based on demonstrated knowledge, skills, abilities, education, certification, and past performance. Individual letters identify the levels of authority for review, approval and disapproval of appraisal reports, delegated to each Review Appraiser.

c. Division Monitoring. Divisions will monitor the experience and qualifications of District Review Appraisers and delegate to the maximum practicable extent consistent with those qualifications.

4-87. Division and HQUSACE Review. Division Review Appraisers and HQUSACE may review and take appropriate action on complex, difficult and controversial appraisals, even though the value does not exceed the delegated authority. The HQUSACE, Chief Appraiser, and the Division Review Appraisers may request specific appraisals for final review and approval or for post review. At least annually, divisions or HQUSACE will post review some of the appraisals prepared by each individual appraiser for quality assurance (QA) and compliance with regulations and USACE policy.

4-88. Qualifications of Review Appraisers.

a. Review Appraiser Experience. Each review appraiser must have a minimum of five years experience in the field of real estate appraising, and have successfully completed the minimum appraisal courses required for and obtained a certification as a State Certified General Appraiser. The experience record of the review appraiser must indicate that he or she has a thorough knowledge of real estate appraisal and has the knowledge and ability to analyze the market and all pertinent data that affect value.

b. Continuing Education. Continuing education is required to keep the review appraiser current with certification requirements.

c. Appointment of Reviewer. Upon appointment, the Division will forward the Review Appraiser's qualifications, experience record and a copy of the delegation letter to the HQUSACE, Chief Appraiser.

4-89. Reserved.

4-90. Reserved.

Section XIII. Personnel Status And Performance Reports

4-91. Required Reports. Personnel status reports and appraisal performance reports are required for submission annually to HQUSACE Chief Appraiser at the end of the fiscal year. They should follow the format issued by HQUSACE (CEMP-CR).

4-92. Reporting Instruction. Format guidance for the following reports issued by HQUSACE (CEMP-CR) is under separate cover.

- a. Administrative Appraisal Updates
- b. Gross Appraisals and Brief Gross Appraisals
- c. Market Rent Estimates
- d. Rental Appraisals
- e. Informal Value Estimates
- f. Review Reports
- g. Appraisal Services Request Checklist
- h. Statement of Work Template

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APPENDIX A

References

A.1. Required References.

A.1.1. Public Laws and Statutes.

10 U.S.C. § 2684a

Army Compatible Use Buffer Zone (ACUB) program

12 USC 1770

Allotment of space in Federal buildings or Federal land

33 U.S.C. § 595

Federal Special Benefits

43 U.S.C. § 315q

Withdrawal of lands for war or national defense purposes; payment for cancellation of permits or licenses

43 U.S.C. § 1752g

Grazing leases and permits

42 U.S.C. 4601 et seq., § 91-646

Uniform Relocation Assistance and Real Property Acq. Policies Act of 1970, as amended, The Uniform Act

42 U.S.C. 9620a

Federal Facilities

Title 3 Americans with Disabilities Act (ADA)

Public Accommodations and Services Operated by Private Entities

Title 10, USC 2667

Leases: non-excess property of military departments and Defense Agencies

Title 29 PL 103-160

National Defense Authorization Act for Fiscal Year 1994

Architectural Barriers Act of 1968 (ABA), Chapters 1, 2, and 3-10

Comprehensive Environment Response Compensation and Liability Act (CERCLA)

Hazardous, Toxic, and Radioactive Waters (HTRW)

A.1.2. Executive Orders.

A.1.3. Regulations.

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32 CFR Parts 175, 176
DOD Base Redevelopment and Realignment Manual (BRRM)
33 CFR 329.11
Geographic and jurisdictional limits of rivers and lakes

33 CFR 329.12
Geographic and jurisdictional limits of oceanic and tidal waters

41 CFR 102-75
Real Property Disposal

41 CFR 102-85
Pricing Policy for Occupancy in GSA Space

41 CFR 102-85.115 - 160
Rent Charges

48 CFR 6.302-3(a)(2)(iii) and (b)(3)(i) and (c)
Industrial mobilization; engineering, developmental, or research

49 CFR 24.103
Criteria for Appraisals

49 CFR, Part 24.105
Acquisition of tenant-owned improvements

AR 200-1, Paragraph 15-6 and AR 405-80
Environmental, Historical, and Cultural Laws

AR 210-135
Banks and Credit Unions on Army Installations

AR 405-80
Management of Title & Granting Use of Real Property

AR 420-1
Army Facilities Management

CFR 24.102d
Establishment and offer of just compensation

CFR 24.104
Review of Appraisals

DOD Financial Management Regulation Volume 5, Chapter 34

DOD Instruction 7230.7
User Charges

ER 405-1-11
Real Estate Acquisition

ER 405-1-80
Management and Outgrant Programs

ER 405-1-90
Disposal Programs

ER 405-2-12
Real Estate Roles and Responsibilities for Civil Works: Cost Shared and Full Federal Projects

ER 1110-2-1302
Civil Works Cost Engineering, 1 May 2008

ER 1105-2-100
Planning Guidance Notebook

ER 1165-2-131
Local Cooperation Agreements for New Start Construction Projects

ER 1165-2-132
Hazardous, Toxic and Radioactive Waste (HTRW) Guidance for Civil Works Projects

ER 1165-2-501
Civil Works Ecosystem Restoration Policy, 3(d) paragraph 17, 30 September 1999

GSA Bulletin FPMR D-242
Placement of Commercial Antennas on Federal Property, dated June 11, 1997

OMB Circular A-25
Transmittal Memorandum #1, User Charges (07/08/1993)

OMB Circular A-45
Rental and Construction of Government Quarters

Title 36 CFR Part 1191
Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities;
Architectural Barriers Act (ABA) Accessibility Guidelines

Title 49 Paragraph 24.102
Basic Acquisition Policies

A.1.4 Other.

Bureau of Land Management (BLM) Instructive Memo No. 93-187 dated 29 March 1993 grazing permits

CECW-PA Policy Guidance Letter No. 34, Non-CERCLA Regulated Contamination Materials at Civil Works Projects, dated 5 May 1992

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CECW-RP Memorandum, Revision to Policy Guidance Letter No 11, Credit for Lands, Easements, and Rights-of-Way (LER) at Shore Protection Projects, dated 21 April 1989
Handbook Real Estate Appraisal and Consulting Contracting Guidelines, US Army Corps of Engineers, December 1997

Project Management Guidance Letter Number 8, Appraisal of Lands Containing Hazardous and Toxic Wastes on Local Cooperation Projects, dated 5 November 1990

Small Residential Income Property Appraisal (Fannie Mae form 1025)

The Appraisal of Real Estate, current edition, Appraisal Institute

Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), The Yellow Book

Uniform Commercial and Industrial Report (UCIAR)

Uniform Federal Accessibility Standards (UFAS)

Uniform Residential Appraisal Report (URAR)

Uniform Standards of Professional Appraisal Practice (USPAP), current edition