

THE JUNE MEMORANDUM

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TABLE OF CONTENTS

1.	Introduction and Overview	p. 3
2.	THE JUNE MEMORANDUM (June 24, 1998)	p. 8
3.	Consequences of the Memorandum for the Echo Lakes Appraisal of December 31, 1999 and December 10, 2001 (El Dorado National Forest, El Dorado County, California)	p. 9
4.	The Nethercutt-Craig Bill is not C.U.F.F.A.	p. 13
5.	Summary and Recommendations	p. 15
	Appendices	p. 18
1.	Abbreviations and Designations	p. 18
2.	Definitions from <i>The Dictionary of Real Estate Appraisal</i> , 4 th ed., 2002, The Appraisal Institute	p. 18
3.	Laws	p. 21
4.	References	p. 24

1. INTRODUCTION AND OVERVIEW

Between the years of 1999 and 2001, 120 real estate parcels in the El Dorado National Forest at Echo Lakes were to have been appraised as *raw land*. The Date of Value Estimate was reported as December 31, 1999 and the Date of Report was reported as December 10, 2001. The appraisal was entitled *Appraisal of Rec Home Sites (Channel Tract, Hemlock Tract, Island Tract, Mermaid Cove Tract and North and South Shore Tracts) For U.S.D.A. Forest Service*.¹ **They were not so appraised.**

The author made an analysis of the 120 land values² determined by the appraiser and accepted by the Forest Service as consistent with (1) SECTION C-2 SPECIFICATIONS FOR THE APPRAISAL OF RECREATION RESIDENCE SITES^{3,4} and (2) UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE⁵ (USPAP). He found raw land values so high as to be completely unexplainable taking into account items (1) and (2), above. .

Now before we engage in a discussion of the fundamental problem at hand, we need to take a side trip to capture some meanings of important words.

First, permittees are going to have to familiarize themselves with Section C-2 Specs and with USPAP so they can tell whether or not the USFS is actually following them.

Secondly, and this is extremely critical, permittees must know the meanings of essential words associated with real estate and with an appraisal. The USFS requires that the definitions come from one specific source. Don't even consider using Webster's Collegiate Dictionary nor the Oxford English Dictionary. Any meanings from these two sources used in an appraisal are automatic grounds for dismissal and rejection by the USFS appraisal reviewers.⁶

FOR EXAMPLE. There is some controversy whether the land beneath a cabin should be referred to as a "site" or a "lot." You wouldn't think that there is anything controversial here. These words "sort of" mean or refer to the same type of object. Think again. No permittee in their right mind would ever want either of these words used to describe or characterize the lands they are permitted to occupy and use. Furthermore, no permittee would ever want a comparable used to determine the value of the land they use to be a lot or site. And here's the reason.

We need to understand the very special meanings of a few words describing real estate entities. The correct and only acceptable place to find these meanings is the *Dictionary of Real Estate Appraisal (4th d.)*.⁷ [See the appendix at the end of this essay for a selection of definitions essential to understanding this essay and all it portends. We will refer to the dictionary as the AD (Appraisal Dictionary) in all that follows.]

FOR EXAMPLE.

1. *raw land* is defined to be “land on which no improvements have been made; land in its **native state** before grading, construction, subdivision, or the installment of utilities.” [Author’s emphasis. Here is the source for the use of the terms in the Forest Service Handbook “land in its native and natural state.” Land in its native and natural state is the definition of *raw land* in the AD.]

2. A *site* is “land that is improved so that it is ready to be used for a specific purpose.” [The land beneath or associated with a permit is not a site! Nor is it to be considered a site. And any comparable bit of land used to determine an opinion of its value is invalid if the comparable is a site. Unless, of course, the site value is diminished correctly so that the modified value is a more accurate opinion of raw land value.]

3. A *lot* has two definitions: “1. A distinct piece of land that forms part of a district, community, city block, etc.; or 2. A smaller portion into which a city block or subdivision is divided; described by reference to a recorded plat or by definite boundaries; a piece of land in one ownership, whether platted or unplatted.” [So also the land associated with a permit is not “a lot.” And no comparable bit of land should be chosen if it is “a lot,” unless its high value is suitably reduced.]

4. A *parcel* is “a piece of land of any size in one ownership.” [Finally we come upon a word with a meaning so general that it is appropriate to use to identify or name raw land associated with a permit. This type of land is purely and simply, a “parcel of raw land.” And any comparable chosen to develop an opinion of its value should also be a “parcel of raw land.”]

Returning to the discussion of the year 2000 appraisals for Echo Lake parcels, the author expected to be able to understand and reproduce the opinions of value determined by the appraiser. The unusual selections of comparable “sites” or “lots” was understandable. Recently sold *raw land* properties in the local area (the Lake Tahoe Basin, South or North shores, El Dorado County) are far and few between, if they exist at all. The Forest Service had already bought up most or all of this type of land in the Basin to be included in the El Dorado National Forest for protection and preservation.

However, recently sold developed lots or sites in local planned suburban (urban or rural). See the AD) developments are plentiful enough to be readily available for use in a reconciliation of raw land value in an appraisal. All that was required in the appraisal reconciliation, following standard appraisal practices, was to correct the very expensive site or lot values down to a value typical of an undeveloped parcel of

similarly sized raw land. Such corrections might include (1) costs of development (grading, construction, subdivision, installment of utilities, ...) of a subdivision; (2) profit (incentive) to a developer; (3) the cost or value of the risk to the developer; and (4) the cost or value attributable to the subdivision or development infrastructure. These are some of the characteristics of sites or lots in a development that increase site or lot values considerably above the value of parcels of the same size.

What mystified the author is that the appraiser did not correct, in his reconciliation, for the high value associate with planning and development in a suburban community. Some force or direction influencing the appraisers was hidden from the author's eyes. The subsequent values in the appraisal made no logical sense.

To address issues associate with the USFS appraisal methods, a number of Hearings were held before the House and Senate subcommittees (See Section 4., p. 12, below) from 1998 through 2000. The testimonies given in the Senate Hearing S. 1938³ in the year 2000 during the 106th Congress make it more than obvious that the contributors knew exactly what the problem was. So they claimed.

In the testimony⁸ of David Mead, then President, Sawtooth Forest Cabin Owners Association, the following facts and claims were brought to the hearing panel's attention:

- (1) a 541% increase in each of 34 permittees' lot fees (\$390 to \$2,500);
- (2) it was evident from reading the first appraisal report that the "typical lot" chosen at Valley View for appraisal was treated as if it were **a fully developed lot within a legally subdivided neighborhood of fee simple second homes**. [Ed. Author's emphasis]; and
- (3) "The appraiser we hired at the Valley View tract was required by the Forest Service to use the same appraisal guidelines that had been provided to agency appraisers for their initial appraisals. This set of appraisal guidelines is flawed and inappropriately changes the rules of the road with respect to determining proper value of land in an undeveloped "natural, native state" as expressed within and required by the agency's own policy."⁹

The subsequent testimony¹⁰ of Mary Clarke Ver Hoef of the National Forest Homeowners (NFH) confirmed the claims made by Mead.

The testimony¹¹ of Paul R. Allman of the American Land Rights Association made the following two claims:

- (1) Upon discussions with certified appraisers, professors and teachers of appraisal, "these individuals felt that the USFS appears to be in violation of the Uniform Appraisal Standards for Federal Land Acquisition" (UASFLA) [contrary to assertions made by the USFS]; and

(2) The cabin owners were assured in meetings during the 1980's by the USFS that "cabin fees would 'never' result in permittee lots being appraised 'as if' they were fee simple lots, **because the many differences between permitted lots and fee simple lots made them obviously not comparable.**" [Ed. Author's emphasis]

The testimony¹² of R. M. Betts (MAI, ASA, SRA), an appraiser certified in both residential and rural appraising [See the appendix, Abbreviations and Designations], made the following recommendation and claim:

(1) "The appraisal should estimate the market value of the raw land provided by the Forest Service,.... The appraisal should not appraise the lot as if a legally subdivided lot."

(2) "The Forest Service is only providing raw land,...It is unfair to ask cabin permittees to pay rent on something that the Forest Service did not provide."

The final testimony is that of Joe Corlett¹³, a certified real estate appraiser from Boise, Idaho who was hired to do a second appraisal for the Pettit Lake permittees. By his account the government appraiser determined the values of the parcels at Petit Lake to be in the range from \$450,000 to \$600,000 per parcel resulting in yearly fees of \$22,500 to \$30,000 respectively. He reappraised the parcels down to values reflecting their (from his point of view) "native and natural" state. His corrected values were \$84,000 to \$212,000 resulting in fees of \$4,200 per year and \$10,600 per year – still very very high permittee fees. He also testified...

(1) "It is my ... opinion that the errors made in the Government appraisal were fueled by the appraiser's analysis of cabin sales that were improved.";

(2) "The cabin owners developed these sites. The government did not help.";

(3) an 854 square-foot cabin " sold below the actual bare land value estimated by the Forest Service...I thought [this] was interesting."; and

(4) "**the instructions issued to me through the Intermountain Region of the Forest Service via a memorandum, which I have attached, from Chief Appraiser Tittman were contrary, in my opinion, to the original written instructions...**" [Ed. Author's emphasis. This statement refers to the June Memorandum that Corlett entered into the hearing record.]

It is evident by the foregoing testimonies of experienced professionals in appraising that everyone on the permittee side in 2000 were fully aware of what the fundamental problem seemed to be and what USFS seemed to be doing to cause the problem.

By these testimonies in the Senate Hearing for S. 1938³, it was demonstrated that there are two real estate markets at work here:

1. The market for parcels of raw land; and
2. The market for developed (subdivision) lots or sites.

Raw land real estate has values commensurate with values found in the Agricultural Census compiled and updated every five years by the NASS¹⁴ of the United States Department of Agriculture (USDA). These Census values are often referred to as the Index of Land Values. Across the United States their values range in the thousands of dollars per acre. In my previous study² I reviewed, analyzed and modeled the data for all of the 58 counties in the state of California. For California as a whole, raw land real estate from 1920 to 1992 (over a period of 72 years) ranged in value from \$105 per acre in 1920 up to \$2,213 per acre in 1992. Furthermore, the increase in raw land value was tapering off by 1992.

On the other hand, the USFS opinions of value for Echo Lake undeveloped parcels were determined to be in the range of \$800,000 per acre to \$5,000,000 per acre and were increasing exponentially in a non-existent fictional real estate market of the Forest Service's own creation and imagination. The size of the errors that resulted from this false appraising is phenomenal.

But except for a little xeroxed piece of evidence introduced by Joe Corlett¹⁶, all the remarks made by the principals on the side of the permittees were conjectural in nature. They merely stated, "we seemed to see something in the Forest Service appraisal method that was not quite right and this is what could explain the error -- *in our opinion*." To which the Forest Service would merely respond with a "We don't agree."

What was needed and what was so far missing was hard written evidence of intentional misdirection. How was it possible for licensed trained appraisers working for the USFS to make and accept such unbelievable errors in appraising? Appraisers with MAI designations should not be making these wrongful opinions of value nor should they be accepting them after careful and critical review.

It was implied by the participants during and in testimony that the appraisers were being "instructed" to make incorrect appraisals.

Where's the proof of this?

How do we go from "claim" or "conjecture" to cold hard fact?

Where's the "smoking gun?"¹⁵

That's next...The June Memorandum¹⁶.

2. THE JUNE MEMORANDUM (JUNE 24, 1998)

MEMORANDUM

To: Kraig Frome/Kim Brower/John Moore

From: Paul Tittman, Chief Appraiser, Forest Service

Date: June 24, 1998

Subject: Re-appraisal of Pettit Lake Recreation Residences

The reappraisal of the Pettit Lake Recreation Residence sites may not be presented, nor developed as a subdivision approach to value. It is the value of the representative site as though unimproved and in the state "as authorized" to a prescribed highest and best use as a Recreation Residence site that is sought. No consideration is to be given to the terms and conditions of the authorization, nor is the site to be appraised as anything other than a "stand alone" site, available in the competitive marketplace for such sites.

The value sought is the Fair Market Value of the subject site as defined in the Uniform Appraisal Standards for Federal Land Acquisition (1992 Ed). The property is to be assumed to be "for sale" in the competitive market for terms equivalent to cash. **No consideration of costs to develop a subdivision, profit to a developer, risk nor infrastructure may be considered in the estimate of Fair Market Value for the subject.** Conjectural nor speculated evidence may not be considered. [Author's emphasis added.]

The appraisal must be based upon open market transactions of similar properties in the competitive area of the subject Recreation Residence site. Consideration may be made of sales of similar leasehold, interests with consideration for that part of the leasehold attributable to the land, and with due consideration for the lease fee interest. Allocation of land and improvements must be based upon market driven allocations, and should include the buyers allocation to the improvements, the county assessor's allocation for tax purposes, replacement cost new for similar improvement(s) from an acceptable source such as Marshal and Swift and allocation based upon paired sales of competitive properties with and without improvements.

The assignment does not consider any contributory value other than to the subject site under appraisal as a Recreation Residence site. Consideration will be give to neighborhood enhancements that were not paid for by the authorization holder or their predecessors. Enhancements to the neighborhood such as roads and utilities paid for by State and Local Government or Utility Companies shall be considered as they effect [sic...affect] value.

Any departure from the standards prescribed in FSH 5409.12, Chapter 6 for Recreation Residence appraisals, without prior written authorization from the Forest Service Chief Appraiser shall be deemed a fatal flaw, and will result in rejection of the report.

note: Kraig Frome and John Moore are Region 4 USFS regional appraisers; Kim Brower is the Region 5 USFS Sr. Review appraiser. Region 4 is the Intermountain Region consisting of National Forests in western Wyoming, Utah, Idaho, Nevada and portions of Colorado and California; Region 5 consists of the National Forests in the state of California.

The set of directives, emboldened for emphasis, leaves in the estimates of raw land value, the considerable value associated with planning and development of sites. Hence any particular subject *typical* assumes a tremendously higher value that it would not normally have in it's true market place – the market place for raw land.

So the mystery that had evaded the author in his previous studies of the USFS appraisal phenomena of highly over-evaluated forest parcels used for recreational use was uncovered. The cause of the over-evaluations was the forced use of the set of secret, behind-the-scene directives in the *June Memorandum*.

The following short section demonstrates the disastrous consequences of the memorandum.

**3. CONSEQUENCES OF THE MEMORANDUM
FOR THE ECHO LAKES APPRAISAL OF
DECEMBER 31, 1999 AND DECEMBER 10, 2001
(EL DORADO NATIONAL FOREST, EL DORADO COUNTY, CALIFORNIA)**

TABLE A. A LIST OF THE SIX COMPARABLE LOT COVERAGE VALUES (DPA)

Estimates of the fair market value of developed sites

COMP	ADDRESS	TYPE	DEV. ADJ.	ADJUSTED VALUE (DPS)	COVERAGE VALUE (DPA)	INDEX 1999 (DPA)
#1	Alice Lane Meeks Bay Vista 99 Meeks Bay Subdivision, El Dorado Co.	address named subdivision	none	\$46,368	\$2,711,128	\$3,340
				\$45,868	\$2,681,892	
				\$47,072	\$2,752,290	
				\$43,432	\$2,539,461	
				\$47,712	\$2,789,711	
				\$47,144	\$2,756,500	
				\$46,240	\$2,703,643	
\$45,740	\$2,674,409					
#3	14036 South Shore, Donner Terrace 21, Donner Lake, Nevada County	address named subdivision	none	\$239,248	\$3,473,881	\$4,075
				\$239,952	\$3,484,103	
				\$236,312	\$3,431,250	
				\$240,592	\$3,493,396	
				\$240,024	\$3,485,148	
				\$238,620	\$3,464,762	
#2	14186 South Shore, Donner Terrace 34, Donner Lake, Nevada County	address named subdivision	none	\$224,248	\$3,256,081	\$4,075
				\$224,952	\$3,266,303	
				\$221,312	\$3,213,450	
				\$225,592	\$3,275,596	
				\$225,024	\$3,267,349	
				\$223,620	\$3,246,962	
#13	14741 Denton Ave, Donner Heights 5, Donner Lake, Nevada County	address named subdivision	none	\$88,748	\$1,288,621	\$4,075
				\$89,248	\$1,295,881	
				\$89,952	\$1,306,103	
				\$86,312	\$1,253,250	
				\$90,592	\$1,315,396	
				\$90,024	\$1,307,148	
				\$89,120	\$1,294,022	
				\$88,620	\$1,286,762	
#7	9045 Manzanita, Rubicon Prop 89, El Dorado Co.	address named subdivision	none	\$177,924	\$2,812,180	\$3,340
				\$178,424	\$2,820,083	
				\$177,928	\$2,812,244	
				\$178,568	\$2,822,359	
				\$177,096	\$2,799,094	
#20	2225 Minal Street, Tahoe Paradise 56, El Dorado Co.	address named subdivision	none	\$17,564	\$626,608	\$3,340
				\$17,064	\$608,770	
				\$17,068	\$608,912	
				\$17,708	\$631,745	
				\$16,236	\$579,230	

1. DPS stands for "dollars per site"; DPA stands for "dollar per acre"
2. The information in columns 1 through 5 is from Herzog¹. Column six is from the Census².

Let's make sure we/you understand what the government appraiser has done as reported in Table A, above. He sampled six developed sites in El Dorado and Nevada counties and determined their fair market values which I converted to "covered values per acre" in "dollars per acre" (DPA). In other words these values fairly characterize developed sites or lots in a planned urban/rurban subdivision and can be used by the reader to estimate value and to make bids for such sites.

FOR EXAMPLE. Suppose you wish to purchase a developed site on which you are allowed to construct a residence with a footprint (coverage) limited to 1,500 sq. foot. What would you bid assuming the lot is "high end?" Donner Terrace 21 or 34 are high end. So take any one of the 12 market values associated with Donner (or an average), say \$3,266,303, and convert it to a value per site by the following simple formula.

$$\text{Site Value} = \text{Cov. Val. per acre} \times (1 \text{ acre} / 43,560 \text{ ft}^2) \times 1,500 \text{ ft}^2$$

obtaining your estimated value per site of \$112, 476 per site. This value or some lesser amount would represent a reasonable estimate of a bid for this site by you. A smart bid would be some value smaller than this. [Note: There are 43,560 ft² in one acre.] But this data could not be used to bid on *raw land*. Ra land is in a completely different and far less expensive market. If you did develop a bid for raw land using this data, you would be viewed as an unintelligent rube.

Furthermore, all these site market values include the several appurtenances associated with planning and development: (risk, incentive, profit, infrastructure, etc.)

Applying the directives in the June Memorandum, the values of the six comparables, listed in Table A. above, used four at a time, were applied to 15 parcels of raw land – leaving in the development value as per the behind-the-scene directives. This is in direct opposition to the written Section C-2 Specifications. It is not only in opposition, it is incorrect appraising and a deceptive practice

To construct the over-valued estimates for the 15 typicals at Echo in Table B., the value in column B. is divided by the value in column D. to produce the value in column E.

TABLE B. THE RECONCILED VALUES FOR THE 15 TYPICAL PARCELS AND CORRESPONDING DAMAGES DUE TO EXCESSIVE FEES

A. PARCEL	B. USFS APPRAISER'S MARKET VALUE	C. COV (FT ²)	D. COV (ACRE)	E. DPA	F. DAMAGES PER PARCEL	G. NO. EFFECTED	H. EST. TOTAL DAMAGES
Channel 7	\$88,700	1,077	.025	\$3,548,000	\$3,635	9	\$32,715
Channel 9	\$43,700	807	.019	\$2,300,000	\$1,385	5	\$6,925
Channel 12	\$21,200	1,052	.024	\$883,333	\$260	5	\$1,300
Hemlock 20	\$79,700	624	.014	\$5,692,857	\$3,185	18	\$57,330
Hemlock 25	\$25,000	764	.018	\$1,388,888	\$450	7	\$3,150

Hemlock 42	\$30,200	573	.013	\$2,323,077	\$710	3	\$2,130
Island 2	\$112,000	828	.019	\$5,894,737	\$4,800	1	\$4,800
Mermaid 14	\$43,500	723	.017	\$2,558,824	\$1,375	6	\$8,250
Mermaid 15	\$97,700	2,380	.055	\$1,776,364	\$4,085	7	\$28,595
Mermaid 16	\$75,200	615	.014	\$5,371,429	\$2,960	4	\$11,840
North Shore 7	\$79,700	1,519	.035	\$2,277,143	\$3,185	14	\$44,590
South Shore 5	\$39,200	562	.013	\$3,015,385	\$1,160	6	\$6,960
South Shore 22	\$22,260	746	.017	\$1,309,411	\$313	11	\$3,443
South Shore 38	\$61,700	1,288	.030	\$2,056,667	\$2,285	23	\$52,555
South Shore 41	\$12,200	359	.008	\$1,525,000	-\$190	1	-\$190
TOTALS						120	\$264,773

1. "Cov" stands for "coverage"
2. Damages: col. F = .05(col. A) - 800. Assumption: \$800 per year is a fair fee²⁵.
3. The information in columns A. Through D. Is from Herzog¹.
4. .05(col A) is the fee paid. Col. F is the error.

Notice. Hemlock 20, Island 2, and Mermaid 16 are \$2,000,000 per acre in excess of the **developed** sites in the Lake Take Basin and at Donner Lake. The Memorandum directives required the appraiser to include the development expenses in the opinions of value for the parcels of raw land at Echo Lakes – thereby effectively treating these subject typicals as sites in an urban development contrary to the directions in the USFS Section C-2 Specifications for the Appraisal of Recreation Residence Sites [sic].⁴

By applying uncorrected market values from the market for subdivision lots or sites to raw land parcels is an unfair appraisal practice and violates **OMB CIRCULAR 25-A** [See LAWS, part 2 in the appendix below, p. 16]. Furthermore, since the base fees collected are \$264,773 in excess of what would be fair and what would have covered the cost to the USFS for this activity, the fees collected violate **31 u.s.c. § 9701**. [See LAWS part 1 in the appendix below, p. 15]. As such the overage represents damages for the Echo Lakes community membership.

Finally, what the June Memorandum definitively shows is that the USFS was intentionally directing their appraisers in Regions 4 and 5 to determine opinions of value for parcels of raw land in the National Forests completely at odds with what is stated in their Section C-2 Specifications.⁴ This practice is not allowed under the Uniform Standards of Professional Appraisal Practice.^{5, 17}

So how bad is all this? Putting the Memorandum directives in perspective, they possess three obvious characteristics:

- 1) **intentional misstatement of material fact** [The USFS is claiming to follow their own manual and Section C-2 Specifications when indeed they are following something completely different – the Memorandum directives – not publicly stated];
- 2) **justifiable reliance on the statement**
[It is clear from the testimonies presented at the hearing that the appraisers were

mystified by the rejection of their re-appraisals, since to them they had followed the C-2 Specifications to the letter.], and

3) **reliance results in damages** [See Table B. where for the Echo Lakes Community, alone, the amount of damages in the base year amounted to a quarter of a million dollars.].

So how bad is this? It is very very bad, indeed. But it gets worse...

Was there a solution developed and proposed by the participants for the over-appraisal problem? Yes there was. And it would have worked had it ever been given a chance.

5. THE NETHERCUTT-CRAIG BILL IS NOT C.U.F.F.A.

The Nethercutt-Craig bill was sponsored by Rep. George R. Nethercutt Jr [WA-5]. It had 13 cosponsors. It was a bill addressed by and acted upon by the House and Senate of the 106th Congress. It was referred to the House Committee on Resources on 11/10/1999; then referred to the Subcommittee on Forests and Forest Health on 11/18/1999; after which Subcommittee hearings were held on 3/23/2000. It was introduced into the Congressional Record [CR E2372] on 11/11/1999.²⁰

At or around the same time, Sen. Larry E. Craig [Id] introduced S.1938 on 11/17/1999 with 7 cosponsors. His introductory remarks appear in CR S14696-14697 on 11/17/1999 wherein the actual original bill was read into the Record. On the same day, the bill was referred to the Committee on Agriculture; then on 3/22/2000 it was referred to the Committee on Agriculture, Nutrition, and Forestry Subcommittee on Forests and Public Land Management. Hearings were held and printed in S.Hrg. 106-788. On 9/12/2000 Craig made his introductory remarks on the measure which were introduced into the Record as CR S8409-8410.²¹

The measure had a heart and soul that would take care of the problem of false appraisal and huge permittee fees. The correctives that would have protected permittees from future huge fees occur in two places in **SECTION 6** of the bill.²²

NETHERCUTT-CRAIG

Sec. 6(b)(1)(C) ESTIMATE OF MARKET VALUE OF TYPICAL LOT and reads

(i) IN GENERAL - The appraiser shall estimate the market value of a typical lot [sic] as a **parcel of undeveloped, raw land** that has been made available for use and occupancy by the cabin owner on a seasonal or periodic basis. [Emphases here and elsewhere added by Author.]

(ii) **NO EQUIVALENCE TO LEGALLY SUBDIVIDED LOT** - The appraiser shall not appraise the typical lot [sic] as being equivalent to a legally subdivided lot.

Sec. 6(b)(2) REQUIREMENTS FOR ANALYSIS OF COMPARABLE SALES - The appraisal shall be based on a prioritized analysis of 1 or more categories of sales of comparable land as follows:

(A) LARGER PARCELS - Sales of larger, privately-owned, and preferably **unimproved parcels of rural land**, generally similar in size to the tract being examined, shall be given the most weight in the analysis.

(B) SMALLER PARCELS - Sales of smaller, privately owned, and preferably unimproved parcels of rural land that are not part of an established subdivision shall be given secondary weight in the analysis.

(C) MAPPED AND RECORDED PARCELS - Sales of privately-owned parcels in a mapped and recorded rural subdivision shall be given the least weight in the analysis.

These protections were supposed to be voted into law. These protections should have appeared in **Public Law 106-291 – Oct. 11, 2000, 114 Stat. 1014 (Title VI), 16 USC 6201**. These protections do irrevocably and unquestionably prevent the USFS appraisers from choosing lots and

sites in planned subdivisions that, along with the directives in the June Memorandum, lead to disastrously high appraisals.

But, as the following evidence shows, these protections were written out of C.U.F.F.A. C.U.F.F.A., as it stands now, is not the Nethercutt-Craig bill. The protections for permittees and regulations limiting the USFS were destroyed.

Public Law 106-291 – Oct. 11, 2000, 114 Stat. 1014 (Title VI), 16 USC 6201.²³

Sections **Sec. 6(b)(1)(C)** (i) and (ii) and **Sec. 6(b)(2)** (A), (B), and (C), the protections, disappeared. They were written out and replaced by

Sec.606(b)(1)(B) ESTIMATE OF MARKET VALUE OF TYPICAL LOT

(ii) IN GENERAL - the appraiser shall estimate the market value of a typical lot in accordance with this title. [Author. A self-referential remark with little or no meaning. The restriction and protective limitation of requiring the appraiser to select only a **parcel of undeveloped, raw land** is gone. Basically, USFS appraisers can select anything they want to. They could chose lots in downtown San Francisco and not violate C.U.F.F.A. The Nethercutt-Craig bill was eviscerated. And the USFS in any future discussions with permittees can say “Don’t blame us. Your representatives in Congress voted for this!” Well...this empty meaningless statement was not what was intended to be law!];

and

(ii) EQUIVALENCE TO LEGALLY SUBDIVIDED LOT. – In selecting a comparable sale under this title, the appraiser shall recognize that the typical lot will not **usually be equivalent to a legally subdivided lot**. [Author. You’ve got to be kidding! Notice and notice well, this “limitation” (?) has been changed from a “NO EQUIVALENCE TO LEGALLY SUBDIVIDED LOT” provision to an “EQUIVALENCE TO LEGALLY SUBDIVIDED LOT.” This gives complete license to the USFS to continue to evaluate parcels of raw land in the National Forests as if they were/are lots/sites in a planned, developed subdivision. And now it’s THE LAW! AND YOUR REPRESENTATIVES IN CONGRESS VOTED FOR IT! THEY ABSOLUTELY DID NOT INTEND TO VOTE FOR THIS!]

Furthermore, the protections under **Sec. 6(b)(2)** REQUIREMENTS FOR ANALYSIS OF COMPARABLE SALES aren’t even mentioned in C.U.F.F.A.

All I can say is that the good work of the 106th Congress, the many and varied congressman and congresswomen and senators, who went to bat for the people have been disgraced and treated with contempt. The will of the people has been overturned and set aside. **Public Law 106 - 291 – Oct.11, 2000** is very definitely not what the good people who worked on behalf of all of the 14,000 to 15,000 or so permittees intended. And this is clear in the published historical Record. There is no doubt that **Public Law 106 - 291 – Oct.11, 2000** is an abomination.

I now finish with my recommendations to those who are now working on “the problem of permittee fees.” It is a much bigger problem than “just permittee fees.”

5. SUMMARY AND RECOMMENDATIONS

The problems facing the remaining National Forest Cabin users are from this author's point of view:

- (1) The fees are too high
- (2) The fee increases at re-appraisal are too large
- (3) The USFS are intentionally directing their appraisers to treat parcels of raw land as if they are sites in an urban residential development
- (4) The USFS is requiring their appraisers to enforce the directives of the June Memorandum violating well established standards of professional conduct set up for the industry by the Appraisal Foundation
- (5) The USFS review appraisers are using the June Memorandum directives to reject re-appraisals that correct for development cost and are actually examples of correct and ethical appraising
- (6) The USFS (allegedly) or someone with an agenda rewrote the Nethercutt-Craig bill, erasing all the protections it provided for permittees. It is evident that the USFS had no problem with C.U.F.F.A. They did not object to it as they did with Nethercutt-Craig. This was a bill they could live with. They modified it to make sure they would not be regulated and that the permittees would not be protected.

To correct these problems and to decrease the fees and to decrease the very large changes in fees at re-appraisal, the groups meeting during the 80's and 90's came up the provisions in Nethercutt-Craig that have nothing to do with C.U.F.F.A. I would therefore suggest...

- (1) Ask Congress to redress the wrong that occurred in the devastatingly destructive rewriting of the Nethercutt-Craig bill. C.U.F.F.A., as it stands, is a fiction concocted by the USFS(?). It was voted on and passed by Congress. It most definitely should not be considered **Public Law 106-291**. The 106th Congress did not intend to process C.U.F.F.A. as item 291, it intended to process the Nethercutt-Craig Bill, S.1938.
- (2) In light of (1), seek a court order preventing the USFS from appraising under the provisions of C.U.F.F.A. C.U.F.F.A. is wrong. It is not the result of the bill discussed in hearings before Congress and should not be considered as such.
- (3) Ask Congress to require the USFS to use the data collected by NASS¹⁴ in the Agricultural Census to establish benchmark values for raw land – and to use these values to determine the value of parcels of raw land in the National Forests (which are agricultural lands under the protection and supervision of the Department of Agriculture.)
- (4) Appraise correctly by following the clearly stated guidelines in the Nethercutt-Craig Bill intended to be passed by Congress.

FOR EXAMPLE – Instead of appraising parcels of raw land individually using sites in a suburban development for comparison, determine the total land occupied by the community of cabin users in the location under examination. Then evaluate rural

properties of the same size using comparable rural parcels (undeveloped raw land). This keeps both comparables and subject parcels in the same (and correct) real estate market. It would also be far easier to select a sale of a comparable parcel of similar size (a strongly recommended practice in rural appraising^{18, 19}). This would trump any use of the June Memorandum directives. Then divide the total value proportionately amongst the cabin users in a reasonable fair way. Some cabin owners pay less, some pay more – but no one pays excessive fees.

(5) Submit examples of the year 2000 appraisals, in light of the remarks made herein, to both the Appraisal Institute and Appraisal Foundation for review and corrective action..

(6) Do not raise fees by introducing more fees such as a “transfer tax.” The Treasury already receives an appropriate long-term capital gains tax from any such cabin sale. The USFS certainly does not deserve any other part of these sales for their own use. See my remarks below in (8) associated with an FTE analysis of USFS fees.

(7) Do not do a “Value Neutral” approach thereby validating and sustaining the mistakes made in the “year 2000” appraisals. These appraisals produced highly inflated values due to wrong appraisal methods, using secretive and hidden directives in the June Memorandum, and therefore collected excessive fees from permittees violating **31 u.s.c. § 9701** and **OMB CIRCULAR 25-A**. However,...

(8) The “platform” suggested by Coalition2 and found on the FHA website is pretty well thought out. I would suggest the following modification (running other numbers through the basic platform) to reduce the overall fees paid to the Treasury.

CUFFA FEE RANGE	PROJECTED PERMITS	USER FEE	USER FEE REVENUE
<\$1,000	1,324	\$500	\$662,000
\$1,000 - \$2,300	4,843	\$1,000	\$4,843,000
\$2,300 - \$5,999	5,597	\$1,500	\$8,395,500
\$6,000 - \$9,999	1,653	\$2,000	\$3,306,000
\$10,000+	583	\$2,500	\$1,457,500
	14000	\$1,333	\$18,664,000

Under the current C2 proposal, the permittees would return roughly \$24,000,000 to the US Treasury to sustain the program costs. At an estimated \$40,000 per FTE, this amount of money pays for \$24,000,000/\$40,000 = 600 federal employees yearly paychecks. 600 employees administering to 14,000 permittees means that each single employee would be responsible for 24 cabin parcels – working on them for a complete year, during the winter months and doing nothing else. This is not an efficient use of federal personnel. Under my reduction, no permittee would initially pay more than

\$2,500 for basically a summer usage. This would support 475 employees, each administering to 30 cabin parcels. Still inefficient – but certainly reasonable. I would suggest the C2 committee run other numbers through their platform, doing a corresponding FTE analysis, to find out what would be a truly reasonable amount to return to the Treasury to sustain the program per **31 u.s.c. § 9701**.

This analysis is assuredly simplistic. But it is meant to provide a start in determining exactly what it costs the USFS to sustain this program. The USFS cannot be trusted to make fair estimates of their costs for this program. And permittees should only be returning the cost (or a little more) of the program to the Treasury [**31 u.s.c. § 9701**.]

Furthermore, without controls over the USFS, they can be expected to take the five tier system and modify it to return even more fees to the Treasury than they currently do. They might even incorporate the five tier system with continued over-appraising to economically devastate the current 14,000 permittees.

Remember. The USFS did not complain about C.U.F.F.A. They did publicly vehemently complain about Nethercutt-Craig. Why? C.U.F.F.A. does not in any way set limits on what the USFS can do. They remain self-regulating.

Public Law 106-291 is a law they can live with.

ABBREVIATIONS AND APPRAISAL SPECIFICATIONS

APPRAISAL INSTITUTE – AI

THREE DESIGNATIONS

1. MAI Designation

The MAI membership designation is held by appraisers who are experienced in the valuation and evaluation of commercial, industrial, residential and other types of properties, and who advise clients on real estate investment decisions.

2. SRA Designation

The SRA professional membership designation is held by real estate solutions providers who are experienced in the analysis and valuation of residential real property.

3. SRPA Designation

The SRPA membership designation is held by appraisers who are experienced in the valuation of commercial, industrial, residential and other types of property.

AMERICAN SOCIETY OF FARM MANAGERS AND RURAL APPRAISERS – ASFMRA

TWO DESIGNATIONS

1. ARA Designation – Accredited Rural Appraiser

2. RPRA Designation – Real Property Review Appraiser

SELECTED DEFINITIONS

FROM THE

APPRAISAL INSTITUTE, *THE DICTIONARY OF REAL ESTATE APPRAISAL*, 4TH ED., 2002

A

actual fraud. A type of fraud based on intentional deception, generally through deliberate misstatement or concealment of information; consists of three elements: 1) intentional misstatement of material fact, 2) justifiable reliance on the statement, and 3) reliance results in damages

appraisal. (*n.*) The act or process of developing an opinion of value; an opinion of value...

appraisal fraud. A form of fraud involving an appraisal service. *See also fraud;* ...

B

block.

1. A segment of a city or unit of land; usually a square area lying between intersecting streets or other physical boundaries; the length of one side of such a square.
2. Part of a legal description in the lot and block system.

C

certification. A part of an appraisal report in which the appraiser certifies that the statements of fact presented are correct to the best of his or her knowledge; that the reported analyses, opinions, and conclusions are limited only by the reported assumptions and conditions; that the appraiser has no (or the specified) interest in the subject property; that the appraiser has no bias with respect to the property or parties involved with the assignment; that the appraiser's engagement in the assignment and compensation for completing the assignment are not contingent upon any aspect of the report; that the appraisal was performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP); that the appraiser has (has not) made a personal inspection of the property; and that no one, except those specified, has provided assistance in preparing the report. Designated members of the Appraisal Institute must also include a statement indicating compliance with the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute; a statement advising the client and third parties of the Appraisal Institute's right to review the report; and a statement indicating the current status of the appraiser under the Appraisal Institute's continuing education program.

E

estate. A right or interest in property.

L

land.

1. The earth's surface, both land and water, and anything that is attached to it. whether by the course of nature or human hands; all natural resources in their original state, e.g., mineral deposits, wildlife, timber, fish, water, coal deposits, soil.
2. In law, the solid surface on the earth, as distinguished from water. ...

lot.

1. A distinct piece of land that forms part of a district, community, city block, etc.
2. A smaller portion into which a city block or subdivision is divided; described by reference to a recorded plat or by definite boundaries; a piece of land in one ownership, whether platted or unplatted.

N

natural land. [not defined **The Dictionary.**]

native and natural land. [not defined **The Dictionary.**]

P

parcel. A piece of land of any size in one ownership.

R

raw land. Land on which no improvements have been made; land in its native state before grading, construction, subdivision, or the installment of utilities.

real estate. Physical land and appurtenances attached to the land, e.g., structure. An identified parcel or tract of land, including improvements, if any.

real property. All interests, benefits, and rights inherent in the ownership of physical real estate; the bundle of rights which the ownership of the real estate is endowed. In some states, real property is defined by statute and is synonymous with real estate.

rural. Pertaining to the country as opposed to urban or suburban; land under an agricultural use; signifies areas that exhibit relatively slow growth with less than 25% development.

suburban. An area in transition from agricultural use to suburban residential and commercial development; an area with both rural and suburban characteristics that is within commuting distance from a city.

S

site. Land that is improved so that it is ready to be used for a specific purpose.

subdivision. A tract of land that has been divided into lots or blocks with streets, roadways, open areas, and other facilities appropriate to its development as residential, commercial or industrial sites.

U

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

LAWS

1. 31 u.s.c. § 9701. Fees and charges for Government services and things of value

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) fair; and

(2) based on—

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

(c) This section does not affect a law of the United States—

(1) prohibiting the determination and collection of charges and the disposition of those charges; and

(2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases. Search this title:

[http://www.law.cornell.edu/uscode/uscode31/usc_sec_31_00009701----000-.html]

2. OMB CIRCULAR No. A-25 REVISED [abridged]

1. **Purpose:** The Circular establishes Federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources. It provides information on the scope and types of activities subject to user charges and on the basis upon which user charges are to be set. Finally, it provides guidance for agency implementation of charges and the disposition of collections.

2. **Rescission:** This rescinds Office of Management and Budget Circular No. A-25, dated September 23, 1959, and Transmittal Memoranda 1 and 2.

3. **Authority:** Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701); 31 U.S.C. 1111; and Executive Orders No. 8248 and No. 11,541.

4. Coverage:

a. The provisions of this Circular cover all Federal activities that convey special benefits to recipients beyond those accruing to the general public. The Circular does not apply to the activities of the legislative and judicial branches of Government, or to mixed-ownership Government corporations, as defined in 31 U.S.C. 9701.

b. The provisions of the Circular shall be applied by agencies in their assessment of user charges under the IOAA. In addition, this Circular provides guidance to agencies regarding their assessment of user charges under other statutes. This guidance is intended to be applied only to the extent permitted by law. Thus, where a statute prohibits the assessment of a user charge on a service or addresses an aspect of the user charge (e.g., who pays the charge; how much is the charge; where collections are deposited), the statute shall take precedence over the Circular. In such cases (e.g., sale or disposal under Federal surplus property statutes; or fringe benefits for military personnel and civilian employees), the guidance provided by the Circular would apply to the extent that it is not inconsistent with the statute. The same analysis would apply with regard to executive orders that address user charges.

c. In any case where an Office of Management and Budget circular provides guidance concerning a specific user charge area, the guidance of that circular shall be deemed to meet the requirements of this Circular. Examples of such guidance include the following: OMB Circular No. A-45, concerning charges for rental quarters; OMB Circular No. A-130, concerning management of Federal information resources; and OMB Circular No. A-97, concerning provision of specialized technical services to State and Local governments.

5. **Objectives:** It is the objective of the United States Government to:

a. ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining;

b. promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits; and

c. allow the private sector to compete with the Government without disadvantage in supplying comparable services, resources, or goods where appropriate.

6. **General policy:** A user charge, as described below, will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. When the imposition of user charges is prohibited or restricted by existing law, agencies will review activities periodically and recommend legislative changes when appropriate. Section 7 gives guidance on drafting legislation to implement user charges.

a. **Special benefits**

1. **Determining when special benefits exist.** When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price). For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service: ...

2. **Determining the amount of user charges to assess.**

(a) Except as provided in Section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in Section 6d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign.

(b) Except as provided in Section 6c, user charges will be based on market prices (as defined in Section 6d) when the Government, not acting in its capacity

as sovereign, is leasing or selling goods or resources, or is providing a service (e.g., leasing space in federally owned buildings). Under these business- type conditions, user charges need not be limited to the recovery of full cost and may yield net revenues.

(c) User charges will be collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are provided in advance to allow reimbursable services.

(d) Whenever possible, charges should be set as rates rather than fixed dollar amounts in order to adjust for changes in costs to the Government or changes in market prices of the good, resource, or service provided (as defined in Section 6d). ...

[<http://www.whitehouse.gov/omb/rewrite/circulars/a025/a025.html>]

REFERENCES

1. Herzog, S.J., *Appraisal of Rec Home Sites (Channel Tract, Hemlock Tract, Island Tract, Mermaid Cove Tract, North and South Shore Tract) For U.S.D.A. Forest Service*, December 31, 1999 and December 10, 2001.
2. Conlan, F. J., *Land Value*, Nov. 2008.
3. *Cabin User Fee Fairness Act of 1999*, United States Senate, Subcommittee on Forestry, Conservation and Rural Revitalization, March 23, 2000. [S1938], pp. 128 - 139.
[C-2.1(f)]
4. {S1938} SECTION C-2 Specifications for the Appraisal of Recreation Residence Sites, p. 2.
[C-2.1(f) (3)]
Site - The site is the actual physical area of National Forest System land as described in a permit, said land being in a natural, native state when the exclusive use was first permitted by an authorised officer.]
5. Herzog, S.J., *Appraisal of Recreational Home Sites, Pinecrest Tract, Stanislaus National Forest, AS OF APRIL 8, 1998, For U.S.D.A. Forest Service*, Addenda, USPAP, pp. 1 - 25.
[Standards Rule 1-1(b)] In developing a real property appraisal, an appraiser must **not commit an error of omission or commission that significantly affects an appraisal;...]**
6. [S1938] , p. 142. [In a letter from K. V. Brewer to J. Corlett dated November 8, 1999 listing 18 "problems" Brewer had with Corlett's re-appraisal at Pettit Lake, she notes in item 4 that Corlett had used Webster's dictionary to define NATIVE AND NATURAL instead of the definition of Chief Appraiser Paul Tittman. Corlett's re-appraisal was denied and not approved by her or the USFS.]
7. Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 4th ed., 2002.
8. [S.1938] , pp. 44 - 45, Mead's testimony.
9. Standards for Recreation Residence Appraisals, Forest Service Handbook, 5409.12, Ch. 60.
10. [S. 1938], pp. 51 - 60, Ver Hoef's testimony.
11. [S. 1938], pp. 61 - 65, Allman's testimony.
12. [S. 1938], pp. 66 - 77, Bett's testimony.
13. [S. 1938], pp. 18 - 19, Corlett's testimony.
14. United States Department of Agriculture, National Agricultural Statistics Service (NASS), various years and archived information, <http://www.nass.usda.gov/>
15. Safire, William, "Smoking gun", In an 1893 Sherlock Holmes story, "The Gloria Scott," Arthur Conan Doyle wrote of a grisly murder by a sham chaplain aboard a prison ship: "We rushed into the captain's cabin . . . there he lay with his brains smeared over the chart of the Atlantic . . . while the chaplain stood with a **smoking pistol** in his hand at his elbow.", January 26, 2003.
16. [S. 1938], p. 140.
17. The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (USPAP), 1998 edition, pp. 1 - 25.
18. The Appraisal Institute, *The Appraisal of Rural Property*, 2nd ed., 2000.
19. James H. Boyken, *Land Evaluation*, 2001
[Boyken is a PhD with the MAI, SREA, and CRE designations and holds the Blake Professor of Real Estate Chair in the School of Business at Virginia Commonwealth University.]
20. THOMAS(The Library of Congress), Nethercutt, House bill, H.R.3327.
21. THOMAS(The Library of Congress), Craig, Senate bill, S.1938.
22. THOMAS(The Library of Congress), Craig, Senate bill, S.1938, contents display., p. 2.
23. THOMAS(The Library of Congress), PUBLIC-LAW 106-291, OCT. 11, 2000.
24. <http://www.nationalforesthomeowners.org/pdfs/C2%20Fee%20Model%20Package.FINAL.pdf>
The website for the National Forest Homeowners (NFH).

25. The \$800 value was first put forth publicly by M. Ver Hoef in public testimony²⁰. She, very simply, argued that if an individual visits and camps in a national forest, he/she would pay \$7 a night. He is limited to a 14 night stay. So during a summer of 112 days consisting of 8 2-week sojourns at eight different national forests (a truly wonderful camping vacation) would cost the camper a total high charge of $112 * \$7 = \784 or about \$800. This is an average! It is only used to estimate the error or damage caused by the incorrect appraisals.