CUFFA: THE NEW RULES

Overview

The Cabin User Fee Fairness Act (CUFFA), which defines how our annual special use fees are determined, has just been implemented with the issuance of the final rules and regulations. This begins a two-year transition period which affects many cabin owners.

Just to review, the special use fee for any particular permitted cabin is based in most cases by the appraisal of a lot in the same tract which has been designated as typical of a group of lots with similar real estate characteristics. On rare occasions, a cabin lot can be different enough from its neighbors to be considered as a separate typical lot group by itself. These typical lot groups and typical lots were chosen and used during the previous round of appraisals, and they may need to be adjusted for the upcoming round. We discuss that below. The annual special use fee that we pay for the right to maintain a cabin is 5% of the appraised value of the typical lot which covers our cabin's lot.

For purposes of CUFFA's implementation, cabin owners divide up into two categories:

Group 1: Those who had an appraisal that was final on or before September 30, 1995. These cabin owners have been paying their yearly fees based upon this appraisal, which we will call the old appraisals, and already are due for new CUFFA appraisals.

Group 2: Those who had an appraisal that was finalized after September 1995. Most of the cabin owners in this category have fees pursuant to this old appraisal which have not been implemented because of legislative actions, including CUFFA, that froze them in place, but some had their appraisals completed and implemented before CUFFA was passed.

CUFFA requires new appraisals to be performed every 10 years, instead of the former 20-year period. Thus, those in Group 1 will be seeing these new appraisals under the new rules starting immediately, with valuation dates perhaps as soon as this summer. Some in Group 2 will also be seeing new appraisals soon, depending upon when their last appraisal was performed. For ease of reference, we will call these the ***10-year appraisals*.**

Transition Period

Those in Group 2 have old appraisals that may be changed as a result of action taken during the transition period. Within this 2-year window, the Forest Service will be asking the permit holders within each typical lot group to decide between 3 choices regarding those old appraisals:
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Option 1: Accept the Old Appraisal. If the old appraisal will result in a reduction to the current annual fee, inform the Forest Service in writing before the bills are prepared in November 2006 that you wish to accept this old appraisal. At the next billing cycle, the beginning of 2007, your new bill should be based on this old appraisal and your fee should be reduced.

If the old appraisal will result in an increase to your fee, you may want to consider Options 2 or 3:

Option 2: Ask for a New Appraisal. We'll call this a ***transition period new appraisal*** and it will be performed pursuant to the terms in CUFFA. The valuation date for this appraisal will be the same as was in the old appraisal. The cost of that transition period new appraisal will be shared equally by the members of the typical lot group and the Forest Service. Such requests will have to be made in writing, by a majority of those affected by the typical lot used in the old appraisal.

If the transition period new appraisal would cause the fee to exceed $3,000 more than the amount of the fee in 1996, then there is a special form for this request and, if the resulting fee from the transition period new appraisal is 90% or more of the fee of the old appraisal, then the resulting fee will be charged retroactively back to 1996, with an annual adjustment to include the inflation factor. This is intended to prevent frivolous requests for second appraisals and it will likely be very effective. Before undertaking this choice be sure to talk with the Forest Service so that everyone agrees on the numbers, here. You need to be reasonably sure that a transition period new appraisal results in a sufficient reduction of your fee to make asking for it a wise decision.

There are a number of old appraisals out there whose values would be far less if the provisions of CUFFA were implemented. With some serious research, this may be a viable option for some typical lot groups. But be careful about the timing. If a new 10-year appraisal will occur during your transition period, requesting a transition period new appraisal may be a waste of money. The most recent appraisal will prevail, so if you will have an updated new 10-year appraisal that sets your fee for 2009 or earlier, then there may be no point in asking for the right to a transition period new appraisal.

On the other hand, it may be possible to ask for the transition period new appraisal immediately, obtain it quickly, and have the new fee set before the end of 2006. If so, you could pay fees based on a lower transition period new appraisal for 2007 and 2008, and maybe 2009, before the new 10-year appraisal is used to set your fees. Thus, each typical lot group will have to determine whether the savings in fees over the anticipated period of time justifies the cost of your share of the transition period new appraisal, and the risk if the fees do not fall as much as you hoped.

Option 3: Request <u>a "Peer Review"</u> of the old appraisal. If a peer review is requested, a qualified appraiser will be chosen by one of the appraisal organizations, depending upon which group the original appraiser may have been a member of. The peer review is to look at that old appraisal to determine whether it complied with the terms of CUFFA, and, if it did not, what the effect would have been if CUFFA's rules had been applied.

It is still unclear whether that means that there would be a resulting new valuation upon which a revised fee might be based. The same deterrent to this request as exists in the request for a transition period new appraisal, the retroactive billing under the same circumstances, applies here. <u>Until we can be sure that this request could result in a real number, rather than just a determination that the old appraisal did or did not comply with CUFFA, we do not recommend this option.</u>

NFH Option 4: <u>Sit on your hands</u> for the next 2 years. If your old appraisal would result in an increased fee but not so drastic as to merit a new appraisal or peer review, or you are paying your fees based on that appraisal, and it is not cost effective to try to change it either, we recommend that you do nothing during the transition period. No increase in fee will occur until the end of the 2-year period as a result of the old appraisal. The only change you will see in the fee is due to the adjustment for inflation. Because this two-year period starts May 2, 2006, and runs to May 2, 2008, the first increased bill you will see as a result of the old appraisal will be payable at the beginning of 2009. As noted, new 10-year appraisals are already being initiated and your new 10-

year appraisal could occur and be implemented during the next two years, before you ever get to a 2009 fee based on the old appraisal.

Another advantage to doing nothing is that you don't have to go through the work of obtaining the signatures of the members of each typical lot group needed to select one of the 3 formal options.

NFH Option 5: Seek Correction of Errors in Old Appraisals. An unwritten option that NFH is championing is an informal correction of factual errors to the old appraisal. Under this option, the typical lot participants could contact the Review Appraiser for their Forest Service Region and point out errors they believe were made in the facts on which their appraisal was based. The Review Appraiser could then contact the original appraiser and determine if corrections can be made. Sometimes the correction of factual errors will result in an adjustment to the resulting value that makes this option worthwhile.

The CUFFA Provisions

The new 10-year appraisals under CUFFA will be different from the old appraisals you have seen. Many of the adjustments to value that we asked for last time were refused and we were told that they were considered part of the 5% of the value we pay for our fee. CUFFA adds these adjustments back into the appraisal.

Keep in mind that CUFFA provides a procedure which is intended to result in a fair fee. Do not confuse this appraisal with an ordinary real estate appraisal used to determine fair market value. Here, we take an imaginary condition, the typical lot, in its natural and native state, stripped of all the amenities provided by a cabin owner, and all those provided by a third party if the Forest Service cannot provide proof that the cabin owner did not pay for it. Then we make adjustments between this stripped down typical lot and whatever the appraiser can find for a "comparable" lot sale.

Lot Improvements

The Forest Service is required to create an inventory of improvements for each typical lot. Improvements include utilities, access (roads or trails), or any other facility serving a lot. This inventory shows who provided the improvement. If the improvement was provided by the cabin owner or their predecessors, no value will be included in the lot for it. If the Forest Service provided the improvement, then the value of the lot will be increased by the value of that improvement. If it was provided by a third party, then the value of that improvement can only be added if the Forest Service can prove that the third party paid for the improvement..

Preparation of the inventory is not the job of the appraiser. He or she will use whatever they are given by the Forest Service permit administrator. You must go to your permit administrator and see what improvements are listed on the inventory. We suspect there are a lot of errors out there. Make sure that all the improvements provided by cabin owners are listed. If the Forest Service claims that the improvement was provided by a third party, ask to see the evidence of this. Lacking evidence, the value cannot be added. Go to the third party yourself, and see if you can find evidence that some fee, or portion of a fee, paid by the cabin owner paid for the installation of the improvement.

Such an effort may be well worth your while. As an example, if the typical lot has a road that is provided by the cabin owner, then the typical lot must be valued, in a natural and native state, as lacking access. The value of a comparable property sale with provided access will have to have a large deduction for the lack of access to the typical lot. The same adjustment may be of significant value for utilities. If the cabin owner paid to have the utilities installed, then no value can be included for their presence.

This may mean that lots used as the "typicals" for the last round of appraisals may no longer be the right lots. See if they have the same improvements associated with them. The roads could have changed since the last appraisal. You and your permit administrator will need to examine these issues.

Value Adjustments

After the condition of the typical lot is determined, "value influences" listed in CUFFA must then be made. The conditions that could lead to adjustments include, but are not limited to:

Location
Weather
Access, roads or trails or over water (or lack thereof)
Timber (prohibition on permittee logging, so lessens value)
Services limitations: Law enforcement
Fire departments
Road maintenance/plowing
Conditions of any lot improvements
Regulatory compliance of any lot improvements (see Regional guidelines or FS Plan restrictions)

Thus, while the typical lot is to be appraised in its "natural and native state" as if there were no cabin owner provided improvements on it, the appraiser then, for limited purposes only, does look at the improvements, including the cabin itself.

The location and weather should result in adjustments. Does the snow preclude the use of the cabin in all but 3 months of the year? Is that different from the comparable sale lot? Are the elevations different, and does that affect the season of use?

Access is an essential adjustment. That road that the cabin owners put in cannot be included in the value, but even if the road is provided by the Forest Service, the fact that the road is long, narrow and unpaved should be an adjustment if the lot chosen as comparable has a road in a different condition.

The "condition of the lot improvements," should be of great help. This is another area where the cabins' condition is considered. Many of us have small, unpretentious cabins. Look at the cabin on the typical lot. Whatever the improvements are near or on the comparable lot, adjustments must be made to make it similar in value to the typical lot's improvements. Wise use of this provision should preclude the use of comparable sales in resort areas, at least without large adjustments in value. Thus the comparable sales should not include the McMansion just across the lake from the typical lot. Requiring the comparable sale to be in the same type of neighborhood, consisting of houses like our cabins, should reduce the value in many locations. This is another area which may cause a need to chose different typical lots. Pay attention to the condition of the improvement on that lot. Is it a typical cabin as well as a typical lot?

Further, CUFFA specifically prohibits the use of comparable lots in urban areas, and in areas subject to conservation or recreational easements, such as the Sawtooth Recreation Area, in which land values have soared due to the creation of the area itself. If such areas are used, then there should be large adjustments to value.

Adjustments for Regional Guidelines and Forest Land Management Plans may also be helpful. If the guidelines limit the size of the structure, then adjustments to value may have to be made. Go through your local rules and make a list of limitations to give to the appraiser. See if the Forest Plan adds other limitations to your use. If there are limitations to the type of structure that can be added to the lot, are there adjustments properly made to the comparable lot that takes this into consideration.

Note that the actual sale price of your cabin or any other cabin in your tract is irrelevant to this process. The appraisal process results in a valuation of each typical lot in its natural and native state, based on comparable bare-ground sales in similar areas. CUFFA's provisions are intended to result in that fee that is fair for the use of the permitted lands. It is not the same as fair market value.

Also note that when adjusting a comparable sale back to the value of the typical lot, the cost of installing the cabin owner provided road or water system must include two factors often omitted in the last appraisals, risk and remoteness. When there is no road, the cost of installing a new one shows up in the marketplace includes the risk of running into unanticipated boulders, and the extra move-in fee for the equipment due to the remoteness of the lot. The same applies to water systems. Even near water sources there is a risk when drilling for water and the cost of moving in a rig is, once again, greater for remote locations. Any adjustments to value for these items between the typical lot and the comparable lot should include the risk and remoteness factors.

Off-Lot Improvements

One or our concerns regarding the language contained in the rules implementing CUFFA has been allayed by the Chief Appraiser for the Forest Service. CUFFA defines the lot (the subject of the appraisal) as being the parcel on which a cabin and related improvements are allowed. The Rules took the words "related improvements" and defined the lot as including off-lot improvements.

We feared that this would add to confusion on the part of the appraisers, and improperly increase the appraisal values. Apparently, this is not the intended result. The inclusion of off-lot improvements allows the inventory of improvements to include these types of improvements, those that should show up on the list of allowed items on your permit. Off-lot improvements, here, are provided by the cabin owner, and thus, may not be included in the value of the typical lot. Thus, the fact that there is a permittee provided off-lot water system, off-lot road, or off-lot dock will not add value in and of itself. The lots only will be valued for the likelihood of being able to add such amenities, which should be determinable with or without the existence of such off-lot improvements.

New Appraisal Booklet Coming

NFH is preparing an updated Appraisal Booklet that will be available on our website electronically and in printed form later this summer. This booklet will explain the appraisal process, detail the steps you'll need to follow to prepare for your appraisal and describe how you can work with the selected appraiser to improve your chances for a truly "fair" appraisal.