

**Farmland Protection Implementation Grants (FPIG) Program Guidance Document:
Appraisals for Conservation Easements**

**ATTACHMENT #1:
MEMORANDUM – Enhancement of Value of Other Property
(dated 10/1/2013)**

**ATTACHMENT #2:
FPIG Guidance Document #6 – Appraisals for Conservation Easements
(dated 9/22/2009)**

**ATTACHMENT #3:
SAMPLE Scope of Work for Easement Appraisals
(dated 8/13/2009)**



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MEMORANDUM

TO: Users of FPIG Guidance Document #6:
Appraisals for Conservation Easements

FROM: Michael Latham
Director

DATE: October 1, 2013

SUBJECT: Enhancement of Value of Other Property (Update)

This is an update to a memo issued by the Department on August 9, 2009.

Please note that the Department does not require an appraisal that complies with the Internal Revenue Service (IRS) requirements. However, the Department requires that an appraisal “address whether there is any reasonable expectation of enhancement of value of other property owned by the seller or a related person as outlined in Section 1.170A-14 of the Treasury Regulations relating to easement valuation.”

If project managers or their advisors have specific questions regarding this issue, please contact David Behm at 518-457-2713 or David.Behm@agriculture.ny.gov.

New York State Department of Agriculture and Markets

**GUIDANCE DOCUMENT SERIES
FARMLAND PROTECTION IMPLEMENTATION GRANT PROGRAM****Appraisals for Conservation Easements****GD # 6*****Overview***

An appraisal determines the value of the conservation easement and is one of the documents that NYSDAM requires prior to the disbursement of funds. The appraisal is one of the most important documents as it sets the value of the easement. Therefore, an independent, high quality appraisal is a program requirement. Appraisals will be reviewed by the Department prior to the disbursement of funds.

Background

NYSDAM recommends that an appraisal be the basis of the value of the conservation easement presented in the application for FPIG funds. While this requires an outlay of funds prior to knowing whether the project will be funded, it greatly improves the accuracy of the proposed budget and offers the landowner a realistic estimation of the proposed purchase price early in the process. However, appraisals aren't required at the time of application.

Appraisals must be prepared by a New York State Certified General Real Estate Appraiser certified by the New York State Department of State Division of Licensing Services. All appraisals must adhere to the Uniform Standards of Professional Appraisal Practice (commonly known as USPAP). Appraisals should be before and after appraisals that consider the value of the property both before and after the imposition of the conservation easement. The minimum standard is a Summary Appraisal Report, however NYSDAM will accept a Self-Contained Appraisal Report¹. NYSDAM recommends that appraisers should be familiar with the valuation of conservation easements. All appraisals will be carefully reviewed by NYSDAM and may be reviewed by outside appraisers.

Elements of an Appraisal

The exact contents of appraisals may vary depending upon the appraiser doing the work. However, all appraisals submitted to NYSDAM for completed FPIG projects must contain the basic elements listed below.

USPAP requires that that appraisal identify the "client" or that person or entity that engages the appraiser. In the case of FPIG projects, the Client should be the county or town applicant for the project or a land trust that has been identified in a Memorandum of Understanding with the municipality. USPAP also requires the appraiser to list "intended users"; NYSDAM, any involved land trust and the landowner should be listed as intended users. USPAP requires a written description of the scope of work of the appraisal. A sample scope of work is included at the end of this Guidance Document.

¹ A Summary Report may not be sufficient to meet IRS standards.

It is important that the actual easement and land plan proposed for the property are incorporated into the appraisal. The appraiser must have a copy of the proposed easement to ensure that the specifics of the individual appraisal are reflected in the valuation. If there are changes to the easement or land plan subsequent to the appraisal report being completed, a letter from that appraiser addressing the easement changes and its impact on value will be required.

The appraisal should list a summary of the qualifications of the appraiser. The effective date of the appraisal must be within three years of closing on the conservation easement or a letter of update from the appraiser will be required by NYSDAM. NYSDAM may require an update if it determines that market conditions require it.

The appraisal process can be initiated after preliminary approval of the draft easement and land plan by NYSDAM. In some cases, the survey reveals significant acreage discrepancies between the proposed land plan and surveyed boundaries of the property that may impact the appraisal. The appraisal can be finalized after the receipt of the final survey. There may be increased costs associated with this process.

Alternatively, appraisals can be done on a per acre basis recognizing that there are often differences between the tax map acreage and the final surveyed acres. For example, the appraiser may conclude that the easement is valued at \$1,000 per acre based on 100 tax map acres. When the survey is complete, if the actual acreage is 102.7, the appraised value of the property would be 102.7 times \$1,000 or \$102,700. However, if the difference between the tax parcel acreage and the surveyed acreage is significant (greater than 10%) NYSDAM may require that the appraiser confirm that the per acre value is still accurate and whether the comparable sales used to determine the appraised per acre value need any adjustment based on size.

The appraisal should address whether there is any reasonable expectation of enhancement of value of other property owned by the seller or a related person as outlined in Section 1.170A-14 of the Treasury Regulations relating to easement valuation. If there is a reasonable expectation of enhancement, the appraised conservation easement value should be reduced by the amount of the increase in the value of the other property.

Appraiser Qualifications

At minimum, the appraisal must be completed by a NYS Certified General Real Estate Appraiser following USPAP guidelines. However, entities are encouraged to use an appraiser that has achieved a higher level of appraisal experience such as having membership professional appraisal organizations such as in MAI, (Member Appraisal Institute) or American Society of Farm Managers and Rural Appraisers. The appraiser must have specific conservation easement appraisal training and experience appraising conservation easements and farm properties.

In addition, the appraisal must be independent. USPAP includes ethics rules that appraisers must carefully follow. NYSDAM will not accept an appraisal where the appraiser or appraisal firm has any interest in the Property being appraised.

Appraisal Process

NYSDAM encourages local entities to develop specific instructions to appraisers setting forth how the appraisal will be prepared. The appraisals for NYSDAM should be “before and after” appraisals and landowner and local entities may need to meet other standards such as those set forth in 170(A)-14 of the tax code (for charitable contribution). A separate appraisal report may be required for the IRS purposes.

Appraisal Review

NYSDAM will carefully review all appraisals to ensure that the appraisal reflects the land plan and proposed conservation easement. In addition, NYSDAM may require an additional review if the appraisal is performed by the same entity that holds the mortgage on the Property.

Conclusion

The appraisal is the basis of a considerable state investment. Appraisals must be performed by qualified individuals and must be supported by comparables sales. Land trust and municipalities are encouraged to seek out qualified appraisers experienced in conservation easement appraisals to complete this work.

Samples and additional guidance available online:

USPAP www.appraisalfoundation.org

NYSDOS Licensing <http://www.dos.state.ny.us/lcns/realestate/index.html>

Treasury Regs. 1.170A-14 http://www.access.gpo.gov/nara/cfr/waisidx_03/26cfr1v3_03.html

Sample scope of work for appraisals – provided by NYSDAM

Appraisal Checklist

- Was the appraisal completed by a New York State Certified General Real Estate Appraiser?
- Does the appraisal adhere to USPAP standards?
- Is the appraisal of the “before and after” method?
- Does the appraisal list the municipality or land trust as the “Client” and NYSDAM, the land trust and the land owner as the “intended users”?
- Does the appraisal include a copy of the proposed conservation easement and land plan?
- Does the appraisal include a summary of the qualifications of the appraiser?
- Is the effective date of the appraisal within three years of closing the project?
- Is the appraisal independent?
- Does the appraiser have a potential Conflict of Interest with the project (i.e. mortgage holder?)
- Does the appraisal address enhancement value, if applicable?

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SAMPLE

Scope of Work for Easement Appraisals

The following tasks will be expected from the APPRAISAL FIRM completing conservation easement appraisals for landowners conveying easements to (name of organization). While the Appraisal may be commissioned by the landowner for the purpose of establishing the conservation easement value, the primary intended client should be the county or town applicant for the project or a land trust that has been identified in a Memorandum of Understanding with the municipality. Such appraisals must meet the following standards and shall be reviewed and approved by both (name of organization) and New York State Department of Agriculture and Markets Staff.

1. Generally:

- a. The Appraisal must be provided by a licensed New York State Appraiser Certified in General Real Estate. The Appraiser shall provide a Summary Appraisal Report that adheres to USPAP.
- b. Update appraisals as requested by (name of organization) Staff.
- c. Modify completed appraisal reports to reflect changes to project configurations as directed by (name of organization) Staff.

2. Meet with (name of organization) Staff or Consultants, as requested, to discuss the development of the appraisals and methodology to be used, with the goal of producing fair, consistent and clear appraisals for use in the program.

3. Details of specific tasks:

a. APPRAISALS

- i. Based on a land plan and proposed deed of conservation easement supplied by (name of organization) Staff, and a site inspection, the APPRAISAL FIRM shall prepare and complete, at a minimum, a summary appraisal report. The report must be substantive, sensible and clearly present and adequately explain the estimated market value of the property before and after the imposition of the proposed conservation easement deed. The difference between these values will be the value of the conservation easement.
- ii. The APPRAISAL FIRM shall adhere to the Uniform Appraisal Standards for Federal Land Acquisition if requested by the client and (name of organization).
- iii. The APPRAISAL FIRM shall consider the total diminution of value to the

property caused by the conservation easement deed and shall not merely value the development rights being granted to the easement holder.

- iv. Buildings may be included in the before and after valuation, to allow for the consideration of any net effect on value as a result of the imposition of the conservation easement.
- v. The direct sales comparison approach¹ should be used to value the property in both the before and after condition. The cost and income approaches should be considered and may be utilized, if appropriate.
- vi. Other approaches may be used in the APPRAISAL FIRM'S discretion to determine the value of the conservation easement, but only if standard methodologies are not available or appropriate.
- vii. The following shall be included in the Summary Report which must be submitted in a spiral bound report, a 3-ring binder, or as a PDF²:
 1. state the identity of the client and any intended users by name or type,
 2. state the intended use of the appraisal,
 3. summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment,
 4. state the real property interest appraised,
 5. state the type and definition of value and cite the source of the definition
 6. state the effective date of the appraisal and the date of the report
 7. summarize the scope of work used to develop the report,
 8. summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions and conclusions; exclusions of the sales comparison, cost approach, or income approach must be explained,
 9. state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and when an opinion of highest and best use was developed by the appraiser, summarize the support and rationale for that opinion,
 10. state all extraordinary and hypothetical assumptions, and state that their use may have affected the assignment results and
 11. include a signed certification.

¹ Where possible, the sales comparison approach in the "After" appraisal should incorporate land sales encumbered with agricultural conservation easements to serve as a direct comparison from market data.

² From USPAP Standards Rule 2-2.2008-2009. For the most current information on USPAP standards, visit: www.appraisalfoundation.org

Deliverables

The APPRAISAL FIRM shall provide (organization name) Staff with three (3) copies of each Complete Appraisal Report within (60) days of the site visit but no later than (90) days of receiving the request for such report by the landowner.