B. DATA DOCUMENTATION AND APPRAISAL REPORTING STANDARDS

INTRODUCTION

Appraisal preparation, documentation and reporting shall be in conformity with the standards and practices of the industry. Currently, the Uniform Standards of Professional Appraisal Practice[1] (USPAP) are recognized throughout the United States as the generally accepted minimum standards of appraisal practice. The USPAP should be considered as a supplement to this document.

It should be recognized that the government's needs for private property for public purposes are quite varied and have a tendency to create unique valuation problems. There has been no attempt in these standards to cover all of the valuation problems that might be encountered in the appraisal of property for government acquisition. Therefore, these standards should not be considered as rigid rules which must be applied, without modification, in every instance.

Unique appraisal problems sometimes require modification of the appraisal process and the appraisal report by the appraiser to ensure that the specific appraisal problem is adequately addressed and that the appraiser's final conclusion of value is accurate. Appraisers should feel free to deviate from these standards in those unique cases in which deviation is required to properly solve the appraisal problem, and such deviation can be adequately justified.

The standards set out below have been developed in recognition that government acquisition of private land can create difficult and complex valuation problems, the solutions to which must be developed with the utmost care. Therefore, these standards are especially appropriate in those instances when proposed acquisitions must be referred to the Department of Justice for condemnation. However, economic considerations and unique program requirements may require modification to these standards. It is recognized that not all government acquisitions result in complex valuation problems, thus not all appraisal reports will require the degree of information, support and documentation cited herein.

[1] The Appraisal Foundation, 1987 (Amended December 4, 1989, April 20, 1990, June 5, 1990).

Therefore, agencies and program managers should feel free to modify these standards to meet their specific agency or program needs. In making such modifications consideration should be given to the comparative cost of the appraisal services and the anticipated cost of the property to be acquired, as well as the anticipated complexity of the valuation problem. For example, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970[2] provides for two levels of appraisal documentation, depending upon the value of the property to be acquired and the complexity of the valuation problem.[3]

Under no circumstances, however, may appraisal standards be set at a level below the minimum required under USPAP and 49 C.F.R. 24.103.

These appraisal standards are not intended to establish a required appraisal report format. While the following should be considered a standard for appraisal report content and documentation, subject to the above exceptions, it should be considered only as a recommended guideline in regard to report format.

B-1. CONTENTS OF APPRAISAL REPORT: The text of the appraisal report should be divided into four parts when the subject of the appraisal is to be acquired in its entirety by the government (total taking) and seven parts when only a portion of the property, or property rights (partial taking), are to be acquired.

PART I - INTRODUCTION

1. TITLE PAGE. This should include (a) the name, street address and agency assigned tract, or parcel, number (if any), (b) the name and address of the individual(s) making the report, and (c) the effective date of the appraisal.

2. LETTER OF TRANSMITTAL. This should include the date of the letter, identification of the property and property rights appraised, a reference that the letter is accompanied by a complete appraisal report, a statement of the effective date of the appraisal, identification of any extraordinary assumptions, limiting conditions, or legal instructions, the value estimate, or estimates in case of a partial taking, and the appraiser's signature.

3. TABLE OF CONTENTS. The major parts of the appraisal report and their subheadings should be listed.

4. APPRAISER'S CERTIFICATION. The appraisal report shall include an appraiser's signed statement that the appraiser, to the best of his or her knowledge and belief, certifies that:

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[2] P.L. 91-646.

[3] 49 C.F.R. {24.103. For a discussion of these appraisal requirements, See, The Appraisal Guide (Washington D.C.: U.S. Department of Transportation, Federal Highway Administration, Pub. No. FHWA-RE-90-006, 1990).

the statements of fact contained in the report are true and correct;

the reported analyses, opinions, and conclusions are limited only by the reported assumptions, limiting conditions and legal instructions, and are the personal, unbiased professional analysis, opinions and conclusions of the appraiser;

the appraiser has no present or prospective interest in the property appraised and no personal interest or bias with respect to the parties involved;

the compensation received by the appraiser for the appraisal is not contingent on the analyses, opinions or conclusions reached or reported;

the appraisal was made and the appraisal report prepared in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice;

the appraiser has made a personal inspection of the property appraised and that the property owner, or his/her designated representative, was given the opportunity to accompany the appraiser on the property inspection;

no one provided significant professional assistance to the appraiser. (If professional assistance was provided the appraiser, the name of the individual(s) providing such assistance must be stated and their professional qualifications should be included in the addenda of the appraisal report.)

The appraiser's certification shall also include the appraiser's opinion of the market value of the property appraised as of the effective date of the appraisal. If the government's taking is of only a portion of the property, or property rights, appraised, the certification shall include both the appraiser's opinion of the market value of the whole property as of the effective date of the appraisal and the appraiser's opinion of the market value of the remainder property after the government's taking, as of the effective date of the appraisal.

The appraiser's certification may alternately follow the appraiser's final estimate of value.

5. SUMMARY OF SALIENT FACTS AND CONCLUSIONS. The appraiser should report the major facts and conclusions that led to the final estimate(s) of value. This summary should include an identification of the property appraised, the highest and best use of the property (both before and after the taking if a partial acquisition), brief description of improvements (both before and after the taking if a partial acquisition), the indicated value of the property by each approach to value employed (both before and after the taking if a partial acquisition), the final estimate of value (both before and after the taking if a partial acquisition), any extraordinary assumptions, limiting conditions or instructions, and the effective date of the appraisal.

6. PHOTOGRAPHS OF SUBJECT PROPERTY. Pictures shall show the front elevation of the major improvements, plus any unusual features. There should also be views of the abutting properties on either side and that property directly opposite. Interior photographs of any unique features should be taken. When a large number of buildings are involved, including duplicates, one picture may be used for each type. Except for an overall view, photographs may be bound as pages facing the discussion or description which the photographs concern, or may be placed in the addenda of the report.

Each photograph should be numbered, show the identification of the property, the date taken, and the name of the person taking the photograph. The location from which each photograph was taken and the direction the camera lens was facing should be shown on the plot plan of the property in the addenda of the report.

In taking photographs, the appraiser should be guided by the knowledge that the government may take possession of the property well before the question of just compensation is settled, thus the land may be substantially altered and improvements demolished prior to a condemnation trial.

7. STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS. Any assumptions and limiting conditions that are necessary to the background of the appraisal shall be stated. Any client agency or special legal instructions provided the appraiser shall be referenced and a copy of such instructions shall be included in the addenda of the appraisal report.

If the appraisal has been made subject to any encumbrances against the property, such as easements, that shall be stated. In this regard, it is unacceptable to state that the property has been appraised as if free and clear of all encumbrances, except as stated in the body of the report; the encumbrances must be identified in this section of the report.

The appraiser should avoid including "boiler-plate" type assumptions and limiting conditions. For instance, an assumption that improvements are free from termite infestation is inappropriate in the appraisal of vacant land. Also to be avoided are the listing of assumptions or limiting conditions that are clearly the appraiser's conclusion. While it may be appropriate for an appraiser to conclude that a probability exists that the property under appraisal could be rezoned and report that conclusion, it is not appropriate for an appraiser to make an appraisal under the **assumption** that the property could be rezoned.

The adoption of an assumption or instruction that results in a "limited appraisal assignment" or "limited appraisal report" will, as a general rule, invalidate the appraisal for eminent domain purposes. For instance, the inclusion of the assumption that a property is free of contamination from hazardous substances when it is suspected that a property may, in fact, be contaminated is an unacceptable practice.[4]

In the case of a partial acquisition, the appraiser should identify those assumptions and limiting conditions which apply to both the before and after taking appraisals, those which apply only to the before taking appraisal and those which apply only to the after taking appraisal.

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[4] See C-9 and C-10, infra, pp. 95-98.

8. SCOPE OF THE APPRAISAL. The appraiser shall describe the scope of investigation and analysis that was undertaken in making the appraisal. The geographical area and time span searched for market data should be included, as should a description of the type of market data researched and the extent of market data confirmation. The appraiser should state the references and data sources relied upon in making the appraisal; if preferred, this information may be shown within the applicable approaches to value.

The applicability of all standard approaches to value should be discussed and the exclusion of any approach to value should be explained and justified.

9. PURPOSE OF THE APPRAISAL. This shall include the reason for the appraisal, and the definition of all values required, and property rights appraised. In most instances the purpose of the appraisal will be to estimate market value. In an appraisal assignment involving a partial acquisition, the purpose of the appraisal will be to estimate the market value of the whole property before the acquisition and to estimate the market value of the remaining property after the acquisition.

It is imperative that the appraiser utilize the correct definition of market value.[5] Definitions of market value handed down by state courts or published by appraisal organizations are not acceptable for federal condemnation purposes.

10. SUMMARY OF APPRAISAL PROBLEMS. The appraiser should briefly describe the principal problems presented in estimating the market value of the property under appraisal and describe the estate to be taken. In the case of a partial acquisition, the appraiser should describe the principal differences in the property between the before and after situations, including any changes in the highest and best use of the property.

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[5] Fair market value is defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy. See also A-2, supra, pp. 3-8.

If the parcel under appraisal includes mineral, or suspected mineral values, fixture and/or equipment values, or timber values, the treatment of their contributory value should be discussed. If separate mineral, fixture, equipment or timber values have been estimated, such estimates must be supported by approved mineral, fixture, equipment or timber appraisals. Any mineral, fixture, equipment or timber appraisal relied on by the appraiser should be included in the addenda of the report. The appraiser should describe the methodology used in analyzing these appraisals and the weight given thereto in his or her final estimate of total property value and the reasoning therefor. In this regard, the appraiser must avoid making the forbidden "summation", or "cumulative," appraisal.[6]

Any special problems encountered in making the appraisal should be described. These may include lack of reliable market data, enhancement or diminution in real estate values in the area by reason of the government's project,[7] special benefits to a remainder parcel,[8] or severance damages.[9]

The purpose of this section is to acquaint the reader of the appraisal report with the specific appraisal problems which have been encountered by the appraiser and will be discussed in detail in the body of the appraisal report.

PART II - FACTUAL DATA - BEFORE TAKING

11. LEGAL DESCRIPTION. This description shall be so complete as to properly identify the property appraised. If lengthy, it should be referenced and included in the addenda of the report.[10]

12. AREA, CITY AND NEIGHBORHOOD DATA. This data (mostly social and economic) should be kept to a minimum and should include only such information as directly affects the appraised property together with the appraiser's conclusions as to significant trends. Changes in the neighborhood, brought about by the government's project for which the property under appraisal is being acquired, shall be disregarded.[11]

13. PROPERTY DATA:

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[6] See A-13, supra, pp. 39-42; C-10, infra, pp. 97-98.

[7] See A-10, supra, pp. 26-28.

[8] See A-12, supra, pp. 35-39.

[9] See A-11, supra, pp. 28-35.

[10] A more detailed standard concerning the legal description of the property to be appraised appears, B-2, infra, pp. 83-84.

[11] See A-10, supra, pp. 26-28.

a. Site. Describe the present use, accessibility and road frontage, land contours and elevations, soils, vegetation, land area, land shape, utilities, mineral deposits, easements, etc. A statement must be made concerning the existence or nonexistence of mineral deposits having a commercial value. Also discuss the detrimental and hazardous factors inherent in the location of the property.[12] An affirmative statement is required in regard to the property's location within a flood hazard area.[13]

b. Improvements. Describe all improvements including their dimensions, square foot measurements, chronological and effective age, condition, type and quality of construction, and present occupancy. This description may be in narrative or schedule form. Where appropriate, a statement of the method of measurement used in determining rentable areas such as full floor, multi-tenancy, etc. should be included. All site improvements require description, including fencing, landscaping, paving, irrigation systems, domestic water systems and private sanitary systems.

In those instances in which the appraiser will rely on the cost approach to value,[14] or in the case of a partial taking that will structurally impact the improvements, a more comprehensive description of the improvements is required.

c. Equipment. This should be described by narrative or schedule form and should include all items of equipment, including a statement of the type and purpose of the equipment. The current physical condition and relative use and obsolescence should be stated for each item or group appraised, and whenever applicable, the repair or replacement requirements to bring the equipment to a usable condition.

Questions regarding whether an item is, as a matter of law, real estate or personalty shall be referred to the agency legal counsel for clarification.

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[12] Detrimental and hazardous factors are present to some extent on practically all properties, with some areas and properties having much more serious factors of this nature than are normally found. Appraisers should determine the types of nuisances and detrimental factors present, such as odors, undesirable land uses, contamination, noxious weeds, etc. With respect to farm properties it is especially important that appraisers consider the area hazards such as noxious weeds, frost, incidence of hail, floods and droughts, and variations in crop yields. Appraisers should list and describe factors that may be undesirable and estimate the extent of their effect. The presence of hazardous substances should be considered in accordance with Sections C-9 and C-10, infra, pp. 95-98.

[13] For this purpose, appraisers should refer to Federal Emergency Management Administration (FEMA) flood hazard maps.

[14] See A-6, supra, pp. 17-19; B-1, 16, infra, p. 75.

In those instances where specialty equipment in encountered, or when the equipment will represent a substantial portion of the property's value, consideration should be given to the retention of an equipment valuation specialist.[15]

d. Use history. When determinable, state briefly the purpose for which the improvements were designed, dates of original construction and major renovations and/or additions. Include a ten-year history of the use and occupancy of the property.[16]

e. Sales history. Include a ten-year record of all sales and, if possible, offers to buy or sell, the property under appraisal. If no sale of the property has occurred in the past ten years, include a report of the last sale.

Information to be reported shall include, name of the seller, name of the buyer, date of sale, price, terms and conditions of sale, and the appraiser's opinion as to whether the sale price represented market value at the time, and, if not, the reasons for the appraiser's conclusion.

f. Rental history. Report the historical rental or lease history of the property for at least the past three years, if this information can be ascertained. All current leases should be reported, including the date of the lease, name of the tenant, rental amount, term of lease, parties responsible for property expenses, and other pertinent lease provisions. The appraiser shall state his or her opinion as to whether any existing lease of the property represents the property's current market, or economic, rent, and, if not, the reasons for the appraiser's conclusion.

g. Assessed value and annual tax load. Include the current assessment and dollar amount of real estate taxes. If assessed value is statutorily a percentage of market value, state the percentage. If the property is not assessed or taxed, the appraiser should estimate the assessment, state the tax rate, and estimate the dollar amount of tax.

h. Zoning and other land use regulations. Identify the zoning for the subject property. This should be reported in descriptive terms (e.g. multiple family residential, 5,000 sq. ft. of land per unit) rather than by zoning code (e.g. MF-2). Other local land use regulations, such as set-back requirements, off-street parking requirements, and open space requirements, which have an impact on the highest and best use and value of the property are to be reported.

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[15] See C-10, infra, pp. 97-98.

[16] Past uses of the property may suggest its historical contamination by hazardous substances. See C-9, infra, pp. 95-97.

If the property was recently rezoned, it should be reported. The appraiser shall determine whether any such rezone was a result of the government's project for which the subject property is being acquired. If so, the appraiser must justify his or her conclusion in this respect and disregard the rezoning.[17]

If the rezoning of the property is imminent or probable, discuss in detail the investigation and analysis which lead to that conclusion under item 14.[18]

The appraiser shall identify, in addition to zoning, all other land use and environmental regulations which have an impact on the highest and best use and value of the property.[19] The impact of the regulations should also be discussed under item 14.

The appraiser should discuss the impact of any private restriction on the property, such as deed and/or plat restrictions.

PART III - DATA ANALYSIS AND CONCLUSIONS - BEFORE TAKING

14. ANALYSIS OF HIGHEST AND BEST USE. The appraiser's determination of highest and best use is one of the most important elements of the entire appraisal process.[20] Therefore, the appraiser must apply his or her skill with great care and clearly justify the highest and best use conclusion in the appraisal report.

The highest and best use of the land, as if vacant, is first estimated. If the land is improved, the highest and best use of the property, as improved, is then estimated. In some cases, the highest and best use of property cannot be reliably estimated without extensive marketability and/or feasibility studies, which in complex cases may call for the assistance of special consultants.[21]

Before it can be concluded that any use for the property is its highest and best use, that use must be **physically possible**, **legally permissible**, **financially feasible**, and must result in the **highest value**. Each of these four criteria must be addressed in the appraisal report.

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[17] See A-10, supra, pp. 26-28. See also B-3, infra, pp. 84-87.

[18] See B-3, infra, pp. 84-87. See also A-23, supra, pp. 61-62.

[19] Ibid.

[20] See A-3, supra, p. 10.

[21] See C-6, infra, pp. 92-93. See also C-10, infra, pp. 97-98.

If the appraiser concludes a highest and best use that will require a rezone of the property, the probability of that rezone must be investigated, analyzed and discussed.[22] Likewise, if the appraiser's highest and best use conclusion will require other forms of government approval, the probability of obtaining those approvals must be investigated, analyzed and discussed.[23]

Often essential in the appraiser's consideration of highest and best use is the conclusion concerning the larger parcel.[24] Because the ultimate determination of highest and best use is the appraiser's to make, and that determination cannot be made until after considerable investigation and analysis has been completed, the appraiser's conclusion as to the larger parcel is sometimes different from the specific parcel he or she was requested to appraise by the agency. In such an instance, the appraiser shall inform the agency of his or her determination of the larger parcel and the agency shall amend the appraisal assignment accordingly.

The use to which the government will put the property after it has been taken is, as a general rule, an improper highest and best use. It is the value of the land taken which is to be estimated, not the value of the land to the taker. If it is solely the government's need which creates a market for the land, this special need must be excluded from consideration by the appraiser.[25] Only on the rare occasion that a private demand for the land exists, for the same use for which it is being acquired by the government, is it proper for the appraiser to conclude that the highest and best use of the property is that use for which it is being acquired by the government.

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[22] See B-3, infra, pp. 84-87. See also A-23, supra, pp. 61-62.

[23] Ibid.

[24] The **larger parcel** is defined as that tract, or those tracts, of land which possess a unity of ownership and have the same, or an integrated, highest and best use. Elements of consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership and unity of highest and best use. See A-11, supra, pp. 28-35. See also A-13, supra, pp. 39-42.

[25] See A-3, supra, pp. 8-11.

15. LAND VALUATION. The appraiser shall estimate the value of the land for its highest and best use, as if vacant and available for such use. In doing so the appraiser's opinion of value of the land shall be supported by confirmed sales of comparable, or nearly comparable lands[26] having like optimum uses. Differences shall be weighed and explained to show how they indicate the value of the land being appraised.[27] The appraiser shall provide adequate information concerning each comparable sale used to enable the reader of the report to follow the appraiser's logic.[28]

When the highest and best use of a property is for subdivision purposes and comparable sales do not exist, resort may be made to the "development approach"[29] to land value, but only if adequate market and/or technical data are available with which to reliably estimate the value of the property by this approach. This method of estimating land value can also be used as a check against the indicated value of the land developed by the use of comparable sales when the sales data is limited. However, this approach to value is complex, often requiring the assistance of other experts[30] and always requiring substantial amounts of research, analysis and supporting documentation.[31]

16. VALUE ESTIMATE BY COST APPROACH. This section should be in the form of computational data, arranged in sequence, beginning with reproduction or replacement cost and should state the source (book, page, including last date of page revision, if a national service) of all figures used. Entrepreneur's profit, as an element of reproduction or replacement cost, if applicable, should be derived from market data whenever possible.

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[26] For a discussion of what constitutes a "comparable sale," see A-4, supra, pp. 12-14.

[27] For discussion concerning the elements of comparison, see A-4, supra, pp. 11-12.

[28] For discussion of comparable sales documentation and information required, see B-1, 17, infra, pp. 75-77.

[29] Also referred to as the "subdivision development method," "anticipated use method," "lot method," and "developer's residual approach." See A-8, supra, pp. 25-26.

[30] Such as marketing and feasibility consultants, land use planners, civil engineers and contractors.

[31] For discussion of this approach to value see, American Institute of Real Estate Appraisers, Subdivision Analysis (1978). See also, Guide Note 6, "Reliance on Reports or Information Prepared by Others," Guide Notes to the Standards of Professional Appraisal Practice (The Appraisal Institute, 1991), pp. D-14-16.

The dollar amount of depreciation from all causes, including physical deterioration, functional obsolescence and economic, or environmental, obsolescence shall be explained and deducted from reproduction or replacement cost. The preferred methods of estimating depreciation are the breakdown method[32] and the abstraction, or sales comparison, method.[33] The estimating of depreciation by the use of published tables or age-life computations is to be avoided whenever possible.

Even though the cost approach will often be the least reliable approach to value and is often maligned by the courts[34] it can be a useful analytical tool in allocating the contributory value of various elements of the property in partial taking appraisals. Therefore, the indicated value of the property by the cost approach should be developed with care.

The cost approach may be excluded when only a salvage or scrap value is estimated or in those instances when it is clear that the improvements would never be reproduced or replaced and application of the cost approach would contribute nothing to the solution of the appraisal problem.

17. VALUE ESTIMATE BY THE SALES COMPARISON (MARKET) APPROACH. Since any recent and unforced sale of the property under appraisal can be the best evidence of its value,[35] any such sale is treated as a "comparable sale" in this approach to value. It shall be analyzed like any other comparable sale and given appropriate weight by the appraiser in concluding a final estimate of value of the property.

All comparable sales[36] used shall be confirmed by the buyer, seller, broker or other person having knowledge of the price, terms and condition of sale. A narrative comparative analysis of each comparable sale shall be made explaining how the sale relates to the property under appraisal in respect to those features which have an effect on market value. The comparative weight given to each comparable sale by the appraiser in developing a final value estimate by this approach will be explained. A comparative adjustment chart, or grid, may assist the appraiser in explaining his or her analysis in this regard.

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[32] For discussion of this method of estimating depreciation see, The Appraisal of Real Estate, 9th ed. (Chicago: American Institute of Real Estate Appraisers, 1987) pp. 381-400.

[33] Ibid., pp. 400-402.

[34] See A-6, supra, pp. 17-19.

[35] See A-5, supra, p. 16.

[36] For a discussion of what constitutes a "comparable sale," see A-4, supra, pp. 12-14.

Documentation of each comparable sale shall include the name of the buyer and seller, date of sale, legal description,[37] type of sale instrument, document recording information, price, terms of sale, location, zoning, present use, highest and best use, and a brief physical description of the property. This information may be summarized for each sale on a "comparable sales" form and included in this section or in the addenda of the report. A photograph of each comparable sale should be included.

A comparable sales map, showing the relative location of the comparable sales to the property under appraisal[38] shall be included, either in this section or the addenda of the report.

The acceptable definition of market value requires that the estimate of value be made in terms of cash or its equivalent.[39] Therefore, the appraiser must make a diligent investigation to determine the financial terms of each comparable sale. The appraiser shall analyze and make appropriate adjustments to any comparable sale that included favorable or unfavorable financing terms as of the date of sale, when comparing the sale to the property being appraised. Such adjustment must reflect the difference between what the comparable sold for with the favorable or unfavorable financing and the price at which it would have sold for cash or its equivalent.

While cash equivalency of favorable or unfavorable financing can be estimated by discounting the contractural terms at current market or yield rates for the same type of property and loan term over the expected holding period of the property, the preferred method of estimating a proper cash equivalency adjustment is by the analysis of actual market data, if such data is available.

18. VALUE ESTIMATE BY INCOME CAPITALIZATION APPROACH. The appraisal shall include adequate factual data to support each figure and factor used and should be arranged in detailed form to show at least (a) estimated gross economic, or market, rent or income; (b) allowance for vacancy and credit losses; (c) an itemized estimate of total expenses, and; (d) an itemized estimate of the reserves for replacements, if applicable.

Capitalization of net income shall be at the rate prevailing for this type of property and location. The capitalization technique, method, and rate used should be explained in narrative form supported by a statement of sources of rates and factors.

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[37] This may be abbreviated if lengthy, or reference may be made to a tax parcel number.

[38] It is important that the location of the comparable sales and the subject property are shown on the same map so that a reader of the report, not familiar with the area, can understand the relative proximity of the properties.

[39] See A-2, supra, pp. 3-4.

As with a recent and unforced sale of the property under appraisal,[40] if the property is actually rented its current rent is often the best evidence of its economic, or market, rent and should be given appropriate consideration by the appraiser in estimating the gross economic rent of the property. Likewise, the appraiser should attempt to obtain historical income and expense statements for the property, for a least the last three years. From these a reliable reconstructed operating statement can generally be developed. If this historical income and expense information is available, it should be included in this section, or the addenda, of the appraisal report.

"The capitalization . . . rate selected and applied . . . reflects the degree of risk in the undertaking involved. It is an extremely important figure in the computation because a change of even a fraction of one percent will produce a surprisingly material change in the result."[41] Therefore, the preferred source of an applicable capitalization rate is from actual capitalization rates reflected by comparable sales.[42]

19. CORRELATION AND FINAL VALUE ESTIMATE. The appraiser shall describe the reasoning applied to arrive at the final opinion of value and how the results of each approach to value were weighed in that opinion. The reliability of each approach to value in solving the particular appraisal problem should be explained.

The appraiser shall state his or her final estimate of value of all of the property under appraisal as a single amount, including the contributory value of fixtures and equipment, timber and minerals, if any. The appraiser must avoid making a summation appraisal.[43]

PART IV - FACTUAL DATA - AFTER TAKING

20. LEGAL DESCRIPTION. The legal description of the remainder property should be included. If a legal description of the remainder property is not available the appraiser may refer to the legal description under item 11 and except therefrom the real estate taken.

If the "estate taken" is less than a fee interest (e.g. an easement), the legal description under item 11 may be referenced.
The legal description of the property encumbered by the "estate taken" should be included. If lengthy, it should be referenced and included in the addenda of the report.

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[40] B-1, 17, supra, p. 75.

[41] United States v. Whitehurst, 337 F.2d 765, 772 (4th Cir. 1964). See also A-7, supra, pp. 20-21.

[42] A-7, supra, p. 21. For discussion of derivation of capitalization rates from comparable sales, see, The Appraisal of Real Estate, pp. 472-474. See also J. D. Eaton, Real Estate Valuation in Litigation (Chicago: American Institute of Real Estate Appraisers, 1982), pp. 127-128.

[43] See A-13, supra, p. 42; C-10, infra, pp. 97-98.

21. NEIGHBORHOOD FACTORS. The appraiser shall describe the Government project for which the property is being acquired and its impact, if any, on the neighborhood and the remainder property.

22. PROPERTY DATA. The remainder property is viewed as an entirely new property to be appraised. In describing and analyzing the remainder property the appraiser shall view it in light of the Government's project for which a portion of the property was acquired.

When any item of the remainder is identical to that described in Part II, the appraiser need not re-describe it.

a. Site. The appraiser shall describe the remainder

site.[44] Particular attention should be paid to the shape, size, available utilities and access available to the remainder site.

b. Improvements. The appraiser shall describe those improvements remaining in whole or it part.[45]

c. Equipment. The appraiser shall describe those items of equipment remaining.[46]

d. History. If the appraisal is prepared after the date of taking, the appraiser shall report the utilization of the remainder property since the date of taking as well as any sales or rentals of the remainder property.[47]

e. Assessed value and annual tax load. The appraiser should estimate what the assessed value and annual tax load will be on the remainder property. This estimate is particularly critical if the income capitalization approach is to be utilized in estimating the value of the remainder property.

f. Zoning and other land use regulations. The appraiser shall report the influence of zoning and other land use regulations on the remainder property.[48] Specific attention should be given to the probability of a rezone of the property brought about by the government's project and the possibility that the taking has resulted in the remainder property becoming non-conforming to land use regulations, such as lot area requirements, setbacks, and off-street parking.

PART V - DATA ANALYSIS AND CONCLUSIONS - AFTER TAKING

INTRODUCTION. As stated in Part IV, the valuation of the remainder is a new appraisal. In those cases of an insignificant taking, the remainder may be so similar to the whole property before the taking that the same highest and best use analysis and the same cost, market and income data and analysis will remain the same and can therefore be referenced and employed in analyzing and valuing the remainder property.

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[44] For the required elements of description, see B-1, 13a, supra, pp. 69-70.

[45] Ibid., B-1, 13b, supra, p. 70.

[46] Ibid., B-1, 13c, supra, pp. 70-71.

[47] For content requirements, see B-1, 13d, e, and f, supra, p. 71.

[48] Ibid., B-1, 13h, supra, pp. 71-72.

However, a change in the basic physical or economic nature of the remainder may result in a change in the remainder's highest and best use or the intensity of that use[49] and may result in damages[50] or benefits[51] to the remainder property which will require new market data and/or analysis than that which was used in the whole property valuation.

23. ANALYSIS OF HIGHEST AND BEST USE. The appraiser shall state and explain the highest and best use of both the remainder land, as if vacant, and the remainder property, as improved. Impacts of the taking on the property's highest and best use, or the intensity of that use, should be described.

If restoration, or rehabilitation, of the remainder property will be required before it can be put to its highest and best use, the physical and economic feasibility of such restoration, or rehabilitation, should be explained and justified. Major restoration, or rehabilitation, may require the services of an expert in the field, such as an architect, engineer, or contractor.[52]

If the taking includes a temporary construction easement, or other temporary property interest, the effect of such temporary taking on the remainder property's highest and best use should be discussed.[53]

24. LAND VALUATION. The appraiser shall estimate the value of the remainder land for its highest and best use, as if vacant and available for such use.[54]

25. VALUE ESTIMATE BY COST APPROACH.[55]

26. VALUE ESTIMATE BY THE SALES COMPARISON (MARKET) APPROACH.[56]

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[49] See A-3, supra, pp. 10-11.

[50] See, A-11, supra, pp. 28-35.

[51] See A-12, supra, pp. 35-39.

[52] See C-10, infra, pp. 97-98.

[53] See C-11, infra, pp. 98-99.

[54] For requirements of land valuation, see B-1, 15, supra, p. 74.

[55] **For cost approach application and reporting requirements, see B-1, 16,** supra, p. 75.

[56] **For sales comparison approach application and reporting requirements, see B-1, 17,** supra, pp. 75-77.

27. VALUE ESTIMATE BY THE INCOME CAPITALIZATION APPROACH.[57]

28. CORRELATION AND FINAL VALUE ESTIMATE. The appraiser shall describe the reasoning applied to arrive at the final opinion of value of the remainder property. If practical, the appraiser should give the same weight to the indications of value by the various approaches to value that were applied in the valuation of the whole property.

PART VI - ACQUISITION ANALYSIS

29. RECAPITULATION. The appraiser shall show the difference between the value of the whole property and the value of the remainder by deducting the property's after value from its before value.

30. ALLOCATION AND EXPLANATION OF DAMAGES. Damages, as such, are not appraised. However, the appraiser shall briefly explain any damages to the remainder property and allocate the difference in the value of the property before and after the taking between the value of the taking and damages to the remainder. The appraiser should note that such allocation is an accounting tabulation and not necessarily indicative of the appraisal method employed.

If damages have been measured by a "cost to cure," the appraiser must justify the cost to cure[58] and demonstrate that the cost to cure is less than the damage would be if the cure was not undertaken.

31. EXPLANATION OF SPECIAL BENEFITS. The appraiser shall identify any special benefits accruing to the remainder property and explain how and why those benefits have occurred.

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[57] **For income capitalization approach application and reporting requirements, see B-1, 18,** supra, p. 77.

[58] This may require the services of a consultant; see C-10, infra, pp. 97-98.

PART VII - EXHIBITS AND ADDENDA

32. LOCATION MAP.[59] (Within the city or area). All maps should include a north arrow and the identification of the subject property.

33. COMPARABLE DATA MAPS. These maps might include, among others, a comparable land sales map, a comparable improved sales map and a rental comparables map. The maps should include a north arrow and show the location of the comparables and the location of the subject property. If this requires the use of a map that is not of a readable scale, secondary maps, showing the specific location of each comparable should be included.

34. DETAIL OF COMPARATIVE DATA.[60] This data may be included in the body of the report. Photographs of the comparative data should be included.

35. PLOT PLAN. A plot plan should assist the reader to visualize the property and the scope of the appraisal considerations. The plot plan should depict the entire subject property, including dimensions and street frontages. Structural improvements should be shown in their approximate locations. Significant on-site improvements and easements should also be shown. The dimensions of improvements should be noted. The plot plan should include a directional north arrow.

The location from which each of the subject photographs was taken should be identified as well as the direction in which the photo was taken.

In the case of a partial taking, the plot plan should identify the remainder area and the dimensions of the remainder area. Significant construction features, if any, of the government project for which the property is being acquired should be shown. If the subject property, or taking, is complex a separate plot plan of the remainder property may be desirable.

36. FLOOR PLAN.[61] Floor plans are required only when they are necessary to describe a unique property feature or the value estimate.

37. TITLE EVIDENCE REPORT. If a title evidence report was furnished the appraiser by the agency, it should be included. If such report is lengthy, it may be referenced.

38. OTHER PERTINENT EXHIBITS. These would include, for example, any written instructions

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[59] All maps and plans may be bound as facing pages opposite the description, tabulation, or discussions they concern.

[60] For description of comparative data required, see B-1, 17, pp. 75-77.

[61] All maps and plans may be bound as facing pages opposite the description, tabulation, or discussions they concern.

given the appraiser by the agency or its legal counsel, specialist reports (such as timber appraisals, environmental studies, mineral appraisals, reproduction cost estimates, cost to cure estimates, equipment valuations), pertinent title documents (such as leases or easements) and any charts or illustrations that may have been referenced in the body of the report.

39. QUALIFICATIONS OF APPRAISER. Include the qualifications of all appraisers or technicians who made significant contributions to the completion of the appraisal assignment.

B-2. LEGAL DESCRIPTION OF THE PROPERTY: It is essential that the appraiser obtain an accurate legal description of the property to be appraised. The appraiser should be furnished with an accurate legal description with the appraisal assignment. If the assignment involves a partial taking, the appraiser should be furnished with both a legal description of the whole property and a legal description of the remainder property, or in the alternative a legal description of the area to be taken and/or encumbered.

If for any reason that is not done, the appraiser is responsible for obtaining an accurate legal description of the property to be appraised, and the property remaining, or to be taken, in the case of a partial taking, before endeavoring to make the appraisal.[62]

The appraiser should verify the legal description both "on the ground" as the physical inspection of the property is made, with the owner of the property, if possible, and by comparing it with city or county maps; aerial maps, as available in county or other governmental offices; and with records available in the recorder's, auditor's, assessor's, tax collector's, or other appropriate city or county offices. If an error of significant importance is discovered, the appraiser should consult the agency from which the appraisal assignment was received before proceeding with the appraisal. If a minor error is discovered which it is believed will not effect the completion of the assignment, the appraiser should make a note of explanation in the appraisal report, making reference to it in the legal description given in the assignment.

It must be determined whether the property interest to be appraised constitutes fee simple title, an easement, leasehold or other property right. Easements, mineral rights, rights of way, or any exception in the description which limits the use of the property or grants certain uses to others, should be carefully ascertained. In the case of a partial taking the agency should provide a written description of the "estate taken" to the appraiser.

It should be borne in mind that legal descriptions contained in letters seldom make any reference to easements or other exceptions. These items of information may be gained from interviews, inspection of the property, abstracts or certificates of title, title insurance policies, or other documents related to the subject property.

B-3. ZONING AND OTHER LAND USE REGULATIONS: Zoning is a factor to be considered in

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[62] Uniform Standards of Professional Appraisal Practice (The Appraisal Foundation, 1990), Standard Rule 1-2a, p. II-2; Standard Rule 2-2, p. II-6.

evaluating property. Accordingly, if the property to be appraised is in a zoned area, recite the restrictions in the appraisal report and interpret the impact of such restrictions on the utility and value of the subject property. In selecting comparable sales for use in the appraisal, the appraiser should select those sales which have the same, or similar, zoning as the property being appraised.

The appraiser must not only consider the use restrictions of the zoning ordinance, but also other provisions of the zoning ordinance that may affect value. These additional provisions might include lot area requirements, building setback requirements, floor/area ratios, lot coverage ratio, off-street parking, landscaping requirements, height limitations, treatment of pre-existing non-conforming uses and treatment of non-conforming uses which became non-conforming after adoption of the zoning ordinance. If the appraisal involves a partial taking, the appraiser must consider the effect of the zoning provisions on both the whole property and the remainder property.

Special care must be taken to determine the effect of a zoning ordinance on a remainder property which has been converted to a non-conforming use by the government's partial acquisition. Some ordinances contain no mechanism for converting a property which has become non-conforming after adoption of the zoning ordinance into a conforming property or classifying it as a pre-existing non-conforming use. Under such circumstances, penalties for non-conformity can be severe. Other ordinances have specific provisions that deal with properties which have become non-conforming by reason of a partial taking by a governmental agency.

An appraiser has an obligation to consider not only the effect of existing land use regulations, but also the effect of reasonably probable modifications of such land use regulations.[63] This includes the impact on value of the probability of a rezone of the property being appraised, if any. The fact that an appraiser concludes that a property could be put to a higher and better use if it were zoned differently does not, in itself, suggest that a probability of rezone exists.

[63] Ibid., Standard Rule 1-3(a), p. II-3.

It should be noted that some courts have used the phrase "reasonable **probability**" of rezone, while others have used the phrase "reasonable **possibility**" of rezone,[64] while still others have used the phrases interchangeably. The appraiser should utilize the phrase applicable in the circuit in which the property is located. If "reasonable possibility" is the test to be used, the USPAP Jurisdictional Exception[65] would apply. "The test, of course, is not either possibility or probability of rezoning in absolute terms, but the fair market value of the locus in the light of the chances as they would appear to the hypothetical willing buyer and seller. . . . [T]he 'market effect' principle is the crux of the test to be applied.'[66]

If an appraiser concludes that a property has a highest and best use physically and economically contrary to existing zoning, an investigation of the probability of obtaining such a rezone shall be undertaken. Typical areas of enquiry will include interviews with zoning administrators and members of the legislative body that make final zoning determinations, a review of rezoning activity of nearby property, growth patterns, change of use patterns in the neighborhood, physical characteristics of the subject and nearby properties, neighborhood attitudes concerning rezones, provisions of land use planning documents, age of the zoning ordinance, and, most important, sales of similar property at prices reflecting anticipated rezoning.

Under no circumstances can a property be valued as if it were already rezoned for a higher use. The property must be valued only in light of the probability of obtaining a rezone. Risk of being denied a rezone, or that an exaction or other condition may be placed on the rezone, always exists. Also to be considered is the time delay and costs associated with the rezoning process.

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[64] See A-23, supra, pp. 61-62.

[65] Uniform Standards of Professional Appraisal Practice (The Appraisal Foundation, 1990), "Jurisdictional Exception."

[66] Real Estate Valuation in Litigation, p. 94. (Citations omitted.)

If the probability of a rezone is impacted, either positively or negatively, by the government project for which the property under appraisal is being acquired, such impact must be ignored.[67] In the case of a partial acquisition, the probability of a rezone must be reanalyzed in regard to the remainder property. If the probability of a rezone for the remainder property is increased, a special benefit may exist;[68] if such probability has been diminished, a severance damage may have occurred.[69]

In addition to zoning, the appraiser must consider the impact of other land use regulations on the utility and value of the property being appraised. These land use regulations may be of local, state, regional or national origin. Land use regulations, in addition to zoning, which may have an impact on property value include, among others:

[67] See A-10, supra, pp. 26-28.

[68] See A-12, supra, pp. 35-39.

[69] See A-11, supra, pp. 28-35.

Building codes	Health codes	Environmental impact statement requirements
Shorelines management regulations	Flood plain management regulations	Subdivision regulations
Rent controls	Comprehensive land use planning documents	Timber harvesting regulations
Mining regulations	Air pollution controls	Water pollution controls
Noise pollution controls	Open space requirements	Coastal zone management
Hazardous/toxic waste controls	Endangered species protection	development moratoriums
Wetlands Regulations		

In those instances when an acquiring agency has identified special or unique land use regulations that may affect the value of a property, the agency should advise the appraiser of such potential at the time of the appraisal assignment.

B-4. UPDATING OF APPRAISALS: When appraisals have been made any substantial period in advance of the date of negotiations for purchase or the filing of a petition requesting right of possession or a complaint or declaration of taking in condemnation proceedings, the appraisals must be carefully reviewed and brought up to date in order to reflect current market conditions. Any change in the value estimate attributable to trending or updating should be fully supported by acceptable market evidence rather than by reference to a market index based on unidentified information.

For trial purposes, in order for the testimony of the appraiser to be accorded maximum weight, it is important that the appraisal report reflects (1) the value as of the date of taking, (2) the precise estate described in the complaint or any amendment thereof, and (3) the best market evidence of the value of the property available at the time of the taking. That date is normally the date on which a declaration of taking is filed, or the date of possession if it preceded the date of filing of a declaration of taking. Where only a complaint has been filed, without being accompanied by a declaration of taking, and possession has not been taken, the valuation is to be as of the date of trial and it is important that appraisal reports be updated accordingly.

If an appraisal report is being updated in preparation for trial, the appraiser should consider it as an opportunity to critically review his or her initial findings, address report weaknesses which may have come

to light as a part of the appraisal review process and to include in the report all of the important market data and reasoning which led to the conclusion of value. In updating an appraisal report for trial purposes an entirely new appraisal report will, in most instances, be required. This will give the appraiser the opportunity to include the most recent reliable market data in support of the estimate of value, even if the newly found market data does not alter the appraiser's original estimate of value,[70] as well as an opportunity to purge the report of outdated data, analyses and opinions.

The appraiser should remember that copies of entire appraisal reports are often exchanged by legal counsel or are provided to opposing counsel through the discovery process. "The thoroughness with which the appraisal is made and reported is the appraiser's greatest protection against professional embarrassment."[71]

[70] It is not an acceptable practice to merely state that newly found market data supports the original value estimate. The new market data must be presented and analyzed.

[71] William C. Himstreet, Writing Appraisal Reports (Chicago: American Institute of Real Estate Appraisers, 1971), p. 28.