



File Code: 1570-1/2720

Date: April 3, 2006

Mr. Frank Stelmach
Island Point Lodge, Inc.
P.O. Box 662
Douglas, MA 01516

Dear Mr. Stelmach:

This is my decision on the appeal you filed under 36 CFR 251 (No. 06-10-00-0006) on behalf of Island Point Lodge, Inc., regarding your 2005 annual performance evaluation. You requested a second level review of the Petersburg District Ranger's November 10, 2005, decision to issue Island Point Lodge, Inc. an unacceptable performance rating for the 2005 operating season. As a result of two consecutive years of unacceptable performance ratings, the Petersburg District Ranger has informed you that Island Point Lodge, Inc. will not be issued a special use authorization for the 2006 operating season.

Background

Island Point Lodge, Inc. was the holder of a temporary special use authorization for the 2004 and 2005 operating seasons. In 2004, you received an unacceptable performance rating because you did not have liability insurance coverage during the operating season as required by the terms of your permit. You did not appeal the 2004 performance evaluation.

During the 2005 season, Island Point Lodge, Inc. was authorized a total of 201 temporary use service days for road-based nature tours, remote-setting nature tours, and freshwater fishing. On November 8, 2005, you submitted an actual use report documenting the use of 287 service days. During September 2005 the District was informed, by a registered cabin patron, that clients of Island Point Lodge, Inc. were seen using the Kah Sheets Bay Forest Service recreation cabin and facilities on Kupreanof Island.

In a letter dated November 10, 2005, the Petersburg District Ranger transmitted your 2005 annual performance evaluation and a Bill for Collection to you. The letter informed you of your unacceptable performance rating for the 2005 operating season based on your use of unauthorized service days (using more service days than was authorized), and the unauthorized use of a Forest Service recreation cabin and associated amenities by your clients. Both the annual performance evaluation and the November 10 letter included statements indicating that, based on the 2004 and 2005 unacceptable performance ratings, Island Point Lodge, Inc. would not be issued a special use authorization for the 2006 operating season.

On November 17, 2005, you filed an appeal of the District Ranger's decision to issue Island Point Lodge, Inc. an unacceptable performance rating for the 2005 season. You also objected to



the statements in the November 10 letter and the 2005 performance evaluation that Island Point Lodge, Inc. will not be issued a special use authorization for the 2006 operating season. On February 9, 2006, the Forest Supervisor affirmed the District Ranger's decision regarding your 2005 performance evaluation in full. The Forest Supervisor also explained that the decision does not constitute a decision concerning future authorizations to occupy or use National Forest System lands since you had not yet submitted an application for future authorization. In accordance with 36 CFR 251.87(c), Island Point Lodge, Inc. filed a second level appeal with the Regional Forester on February 16, 2006.

Issues

Issue 1. Whether Island Point Lodge, Inc. was notified of the requirements for obtaining liability insurance prior to the 2004 operating season.

This issue is related to your failure to secure liability insurance for the 2004 operating season resulting in an unacceptable performance evaluation. Although the appeal filing period for the 2004 performance evaluation has expired, I will briefly address your concern. In your second level appeal, you concede that you had a responsibility to obtain the required insurance, but you contend that the Forest Service failed to notify you that your application was incomplete because you did not have the proper insurance. The record indicates that you were notified in letters dated March 4, 2004, and April 6, 2004, that operations on National Forest System lands would not be authorized after May 4, 2004, unless the Forest Service received verification that Island Point Lodge, Inc. was covered by an acceptable liability insurance policy [Responsive Statement, Exhibit 13, 2004 Performance Evaluation, p. 1]. Verification was not received; therefore, the District Ranger determined that all of your service days for the 2004 operating season were unauthorized. This was a factor in the Ranger's determination that your performance was unacceptable. The 2004 performance evaluation also states that should Island Point Lodge receive an unacceptable performance evaluation in 2005, a permit would not be issued to them in 2006.

Based on my review of the record, I conclude that it was within the discretion of the District Ranger to determine that your performance for the 2004 operating season was unacceptable as you did not meet the terms of the permit by obtaining the proper liability insurance.

Issue 2. Whether Island Point Lodge, Inc. used unauthorized service days in the 2005 operating season.

The record indicates that you were authorized a total of 201 temporary use service days for the 2005 operating season [Responsive Statement, Exhibit 4, p. 1]. You contend that these service days were the best estimate you could provide in January as you had not yet attended any of the promotional shows at which you acquire clients. Your 2005 special use permit included a provision that the permit holder may vary the use of service days by 15 percent before requesting, in writing, additional service days. This means that you could have used up to 231 service days in 2005 before requesting additional service days. The actual use records you submitted at the end of the operating season indicate that you used 287 service days, exceeding

authorized used by 56 days. There is no indication in the record that you requested additional service days.

I concur with the Forest Supervisor's conclusion at the first level of appeal that the District Ranger's determination that your performance was unacceptable based on your unauthorized use of service days was reasonable.

Issue 3. Whether unauthorized use of a Forest Service cabin and associated amenities occurred during the 2005 operating season.

The record indicates that an investigation of a complaint received from users of the Kah Sheets Bay Forest Service cabin validated that clients and guides of Island Point Lodge, Inc. used the outhouse at the cabin and stored equipment on the porch of the cabin [Responsive Statement, p. 1]. You have not denied this use. Your special use permit clearly states that use of the Forest Service cabin or its amenities is not authorized [Responsive Statement, Exhibit 4, pp. 18 of 19 of the Special Use Authorization PET270].

Based on these findings, I concur with the Forest Supervisor's conclusion at the first level of appeal that the District Ranger had a reasonable basis to determine that your performance was unacceptable based on the unauthorized use of Forest Service facilities.

Decision

Based on my review of the record provided by the Petersburg District Ranger, I concur with the Forest Supervisor's finding that the District Ranger acted within her authority and had sufficient information to support an unacceptable performance evaluation for the 2005 operating season. I uphold the Forest Supervisor's decision to affirm the District Ranger's decision in full.

My decision constitutes the final administrative determination of the Department of Agriculture on your appeal [36 CFR 251.87(e)(3)]. It is not subject to further review by the Chief of the Forest Service.

Sincerely,

/s/ Paul K. Brewster

PAUL K. BREWSTER
Appeal Reviewing Officer

cc: Tongass Forest Supervisor
Petersburg District Ranger
Tongass Appeal Coordinator