



**File Code:** 1570 (251)  
#00-01-00-0012  
**Date:** August 9, 2000

Bob and Connie Reynolds  
RR#1, Box 1051  
Fromberg, MT 59029

CERTIFIED MAIL-RETURN RECEIPT  
REQUESTED

Dear Mr. and Mrs. Reynolds:

This letter is my review decision of your Notice of Appeal (NOA) on the estimated value of your recreation residence, lot #1 located on Tamphery Creek in the Gallatin National Forest, and the subsequent recreation residence fee based on this appraised value.

My review is conducted pursuant to, and in accordance with 36 CFR 251. My responsibility as Reviewing Officer is to ensure the analysis and decision are in compliance with applicable laws, regulations, and policy. This review decision hereby incorporates by reference the entire administrative appeal record.

I apologize for the delay in acting upon your appeal. It is an extremely busy year and staff time is stretched very thin.

## I. SUMMARY

On December 22, 1999, District Ranger Jan Lerum signed a letter for Gallatin National Forest Supervisor David P. Garber notifying you of the fee for your recreation residence for the year 2000. This letter also advised you of your appeal rights under 36 CFR 251, regarding the implementation of the fee.

On January 12, 2000, you filed your NOA with the Regional Forester, Dale Bosworth. I acknowledged your NOA by letter on January 27, 2000. On February 28, 2000, Supervisor Garber forwarded his Responsive Statement for my use in addressing your specific appeal issues. You received a copy of this statement but you did not reply to it by the due date of March 13, 2000.

## II. OVERVIEW OF ISSUES AND RELIEF REQUESTED

The following issue was identified from your NOA:

This appraisal of a typical lot and subsequent implementation of the recreation residence permit fee has "adversely affected my family and I." Specifically:



- 1) Whether the appraisal of the typical lot is an appealable direct decision on your base annual rental fee;
- 2) Whether your lot should be “thrown into the Big Sky Resort climate to establish the lease fee” when “my small cabin and resources do not have anything in common with that area, making this assessment very unfair. My cabin was there long before Big Sky;”
- 3) That “this fee will most certainly force lower scale permittees such as myself to sell out....”

The relief you have requested is “to reconsider this fee or how it is implemented.”

### III. REVIEW FINDINGS

I have thoroughly reviewed the appeal record, the concerns raised in your NOA, and the Forest Supervisor’s Responsive Statement that also deals individually with your issues. The results of my review paraphrase the discussions contained in the Supervisor’s Responsive Statement. I will summarize these below. .

- 1) A contract appraisal of the typical lot (Tamphery Creek lot #11) was approved by the Forest Service Review Appraiser, Mr. John Hickey, and then accepted by the Forest Supervisor. The Forest Supervisor advised you in an April 10, 1998 letter, that if you disagreed with the appraisal you could seek a second appraisal. Forest Service policy, as published in the Federal Register, Vol.59, No 105, Thursday, June 2, 1994, explains that if after the holders have reviewed the first appraisal report and are not satisfied, the Forest Service must “provide an opportunity for affected holders to obtain, at their expense, an appraisal report from an appraiser holding at least the same or similar qualifications as the one selected by the Forest Service.” Then the policy explains the Forest Service must give full and complete consideration to both appraisals. If the appraisers cannot agree, the Forest Supervisor will utilize either or both appraisals to determine the fee, unless a third appraisal is requested and accepted by the Supervisor. You did not contact the Forest Supervisor to register any disagreement with the appraisal nor to express any interest in seeking a second appraisal.
- 2) You are concerned that your lot was “thrown into the Big Sky Resort climate to establish the lease fee.... making this assessment very unfair.” Forest Service policy requires that the appraiser use comparable market sales of sufficient quantity and quality to make them reflective of subject lot characteristics. We have followed this policy explicitly. By not seeking a second appraisal, you did not take advantage of the opportunity to perhaps have another appraiser use different comparable sales or to validate the ones the appraiser did use.
- 3) You contend that the new fee level will force some permit holders to sell out, presumably because the fee is now not affordable. The Forest Supervisor succinctly outlined Forest Service policy on this issue in his responsive statement. The outcome of that discussion is that the Forest Supervisor was in compliance

with Forest Service policy by having the appraiser determine fair market value, having that appraisal reviewed, approving the appraisal, and using that value to determine the base fee for year 2000. While the Federal Register, Vol. 59, No 105, Thursday, June 2, 1994, does reaffirm that recreation residence special use permits are "valid and important components of the overall National Forest recreation program," it does not address or direct the program toward any specific level of income that the holders must have.

#### IV. DECISION

I find the Forest Supervisor's decision to base the permit fee for your cabin on the current appraisal to be reasonable and in conformance with applicable laws, regulations and policy. I find that you had several opportunities to interact with the Forest Supervisor on the value of your recreation residence lot and failed to do so. I affirm the Gallatin National Forest Supervisor's decision to base the special use permit fee for your Tamphery Creek cabin lot on the existing approved appraisal for the year 2000. Your request for relief is denied.

This is the final determination of the Department of Agriculture, unless the Chief of the Forest Service, on his own initiative, elects to review the decision within 15 days of receipt (36CFR 251.87(e) and 251.100).

Sincerely,

/s/ Gary A. Morrison

GARY A MORRISON  
Reviewing Officer  
Director of Recreation, Minerals,  
Lands, Heritage and Wilderness