



United States
Department of
Agriculture

Forest
Service

Northern Region

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Date: August 31, 2000

J. Tiffin Hall
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Binney, P.C.
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Missoula, MT 59806-4947

Richard Kiehl
5505 Navajo Drive
Pensacola, FL 32507-8519

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear Messrs. Hall and Kiehl:

This letter documents my review decision of your Notices of Appeal (NOA) on the decision to implement the new recreation fee schedule for your recreation residence lots located on the Lolo and Flathead National Forests (LNF and FNF). This is also my review decision of Flathead National Forest Supervisor Cathy Barbouletos' decision not to grant further time extensions for submission of a second appraisal.

I conducted my review 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 policies. This review decision hereby incorporates by reference the entire administrative appeal record.

I. SUMMARY

On November 30, 1999, you were sent a Bill for Collection notifying you of the decision on your recreation residential lot fee(s) for the year 2000. In addition, Supervisor Barbouletos notified you on December 20, 1999, that additional time to complete second appraisals would not be granted. A follow-up letter dated December 21, 1999, advised you of your appeal rights regarding the implementation of the fee. On January 4, 2000, District Ranger Chuck Harris sent letters to recreation residence permit holders explaining the November 30, 1999, Bill for Collection, and describing appeal rights.

On February 7, 2000, you filed your NOA with Forest Supervisors Barbouletos (FNF) and Deborah Austin (LNF), and Regional Forester Dale Bosworth. I acknowledged your NOA by letter on February 18, 2000. In that letter you were advised that your appeals had been consolidated because they contain similar issues and timelines (36 CFR 251.95(d)), and your



request for stay of rent increases was denied.

On February 22, 2000, I notified Supervisor Barbouletos that the time to submit the Responsive Statements had been extended to March 24, 2000. Supervisors Barbouletos and Austin submitted their Responsive Statements to me on March 23 and March 24, 2000, respectively. You did not elect to reply to the Supervisors' Responsive Statements within 20 days of the statements' postmarked date, as specified by 36 CFR 251.94 (c). Therefore, I have used the Responsive Statements and case records in addressing your specific appeal issues.

II. OVERVIEW OF ISSUES AND RELIEF REQUESTED

The following issues were identified from your Notices of Appeal:

- 1) The fee increase for Recreation Residence Special-Use Permits is far in excess of what was expected.
- 2) The proposed rent increase is based upon five percent of the market value as if the lots were privately owned. This is unreasonable and unfair.
- 3) There is no justification for the Forest Service charging rents on these improvements in excess of what would have to be paid commercially in the private sector.
- 4) Some members of the SSFSLHA were not provided copies of the appraisal report.
- 5) There was a departure from the Federal Register on the 45-day review period.
- 6) There is an information discrepancy between national forests regarding policy for sleeping cabins.
- 7) There were procedural and mathematical errors in producing the appraisal report.

You have requested relief as follows:

- a) The appraisals affecting members of the SSFSLHA should be tossed out and redone.
- b) The rent increases should be repealed and nullified.
- c) The members of the Holland Lake Homeowners Association should be allowed to submit a second appraisal.

III. REVIEW FINDINGS

I have thoroughly reviewed the appeal record, the concerns raised in your NOA, and the Forest Supervisors' Responsive Statements that present an extensive discussion of each of the above appeal points. The results of my review summarize these discussions below.

Texts in bold print are quotes from your appeal letters.

- 1) **“This proposed rent increase is far in excess of what we had been lead to expect...Now, this change in policy will cost many of us tens of thousands of dollars because of diminished value of our investments...”**

Please refer to the Forest Supervisors' Responsive Statements for a thorough discussion of this issue. I doubt that any of us would have guessed the magnitude of the property value increases and resultant rental fees. However, staff members from both the Flathead and Lolo National Forests have spent considerable time and energy in meeting and discussing with you the development of the new regulations, appraisal process and implementation of the new fee

structure. I agree with Supervisor Austin that the value of your investments have increased, not decreased.

2) **“The proposed rent increase is based upon 5% of the fair market value of a typical lot as based on the premise that the leased lots are owned in fee simple. For many obvious reasons, that premise is false and creates a rent which is unreasonable and unfair.”**

“Fair Market Value as defined in the USFS appraisal is flawed.” (Kiehl)

“Site/Cabin usage is restricted...” (Kiehl)

“Many of our lease holders, myself included, are retirees on fixed incomes...” (Kiehl)

It is important to understand the details of this issue. The Federal Register Vol. 59, No. 105, June 2, 1994, clarifies the policy for determining annual rental fees. The difference between fee simple estate and national forest recreation residence special-use permit is accounted for in the rate the Forest Service appraiser applied to the appraised value. Fee simple is defined as a fee without limitation to any class of heirs or restrictions on transfer of ownership (Webster, 1970). Permit conditions, prohibitions against fulltime occupancy, and the seasonal nature of use are factors the Forest Service considered to create a rent that is reasonable and fair. As required by national policy direction, the Forest Service used five (5) percent instead of a value in the range of 8 to 12 percent of the fair market value usually found in the private market for similar rental properties.

Forest Supervisor Barbouletos also discussed this issue in detail in her Responsive Statement under contentions 1a through 1d. I can add nothing to materially improve upon the Forest Supervisors' statements.

3) **“...and there is no justification for the USFS charging rent upon these improvements...the total cost to the lessees is far in excess of the same amount they would have to pay for equal and better facilities offered commercially. Judged by this standard, the proposed rent increase is further unfair and unreasonable.”**

You will find in the Forest Supervisors addressed this issue in detail in each of their respective Responsive Statements (FNF, Contention 1c; LNF, Issue 3). Their specific answers address the substance of your concerns.

4) **“some members of the SSFSLHA were not provided copies of the report; they were told they could purchase copies at Kinko's for \$25”**

Former LNF Supervisor Chuck Wildes was very specific in his letter of January 8, 1998, in which he stated that review copies of the appraisal report (releasable portions only) were available upon request. On February 12, 1998, former FNF Supervisor Rodd Richardson provided a copy of the appraisal and review report to each Flathead NF recreation residence permit holder. The appraisal information was available to all who desired it.

5) **“We were not notified that we had 45 days to review the appraisal; we were told we had 45 days to request a second appraisal. This represents a significant departure from the Federal Register.”**

**“To the best of my knowledge we still intend to submit a second appraisal to the USFS.”
(Kiehl)**

Both Forest Supervisors Barbouletos (FNF, Contention 2b) and Austin (LNF, Issue 5) discussed this issue in detail in their respective Responsive Statements. I believe all laws, regulations and policies were properly followed, and that you were afforded reasonable opportunities to understand the appraisal process and to obtain and submit a second appraisal.

6) **“During the May 25 [1998] meeting, Mr. Zier, Lolo National Forest, was asked...about the policy regarding sleeping cabins. Mr. Zier responded that the fee was intentionally set high in order to discourage sleeping cabins. This is in direct conflict with information provided by Flathead Forest personnel...”**

I will reemphasize the Forest Supervisors’ responses. The Federal Register, Vol. 59, No. 105, June 2, 1994, states, *“Allow no more than one dwelling per lot to be built. In those cases where more than one dwelling (residence/sleeping cabin) currently occupies a single lot, allow the use to continue in accordance with the authorization. However, correct such deficiencies, if built without prior approval, upon transfer of ownership outside of the family (husband, wife and dependent children).”* The Forest Service Manual (FSM 2721.23a – 6.) echoes the Federal Register direction. In administering recreation residence special-use permits, individual national forest administrators must evaluate each situation involving guest/sleeping cabins, and are responsible for determining whether or not it is appropriate to continue to authorize these or other ancillary uses.

7) You contend, **“...the appraisal report does not follow FS guidelines in several instances...”** You further contend that the appraisal report contained at least one mathematical error which resulted in a 64 percent adjustment, when the correct calculation should have resulted in a 61 percent increase.

My review of these calculations and the available record indicates there were no mathematical or procedural errors.

IV. DECISION

I find the Lolo and Flathead National Forest Supervisors’ decisions to be reasoned and in conformance with applicable laws, regulations and policies. I hereby affirm their decisions in full, and your request for relief is denied (36 CFR 251.99).

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 of his copy of this review letter (36 CFR 251.87(e) and 251.100).

I regret that this process has run so long, and I apologize for our delay in acting upon your appeal.

Sincerely,

/s/Gary A. Morrison
GARY A. MORRISON
Reviewing Officer
Director of Recreation, Minerals,
Lands, Heritage and Wilderness