



**United States
Department of
Agriculture**

**Forest
Service**

**Beaverhead-Deerlodge
National Forest**

File Code: 1570 (251 Appeal)
Route To:

Date: July 11, 2000

Subject: Responsive Statement, Kaiser Lake Recreation Residence Appeals

To: Appeal Reviewing Officer, Kathy McAllister

In accordance with 36 CFR 251.94 (b) I am hereby submitting the responsive statement for the Kaiser Lake recreation residence appeals. The following people appealed the lot value determined by appraisal as directed by Forest Service policy, effective June 17, 1994 (Federal Register Vol. 59, No. 105, June 2, 1994).

Appellant	Appeal #	R.O. Group
William Antonioli	00-01-00-0040	+
Stephen Neal	00-01-00-0049	+

These two appeals are being grouped together under one responsive statement because their appeal points are identical. The Regional Office also grouped the appeals based on issues. The appeals marked with “+” were grouped by the R.O. in a letter dated April 6, 2000 (Appeal Record, Doc. 8).

The appeal record is contained in two 3-ring binders with several sections. An index of the project file is attached to this letter. The project file will be delivered to your office on July 10, 2000. References are made throughout this letter to the appeal record. **Please note:** the same appeal record is used for both the Georgetown Lake and the Kaiser Lake appeals. Mr. Stuckey’s appraisal titled “*A Self Contained Appraisal Report of Georgetown Lake Cabin Sites*” includes the appraisal for the Kaiser Lake site. It is referred to as Tract G – Kaiser Lake – in his appraisal.

When the appellants received letters identical to those received by the Georgetown Lake appellants during the appraisal and appeal processes, I included only one representative letter in the appeal record in order to keep the appeal file concise.

Decision Documentation Addressing Appeal Grouping:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 8	1570 letter dated April 6, 2000 informing appellants their appeals will be grouped by the R.O.

Decision Being Appealed



On January 24, 2000, District Ranger Bob Gilman sent appellants a letter enclosing their Bills for Collection for the calendar year 2000 rental fee for their recreation residence special-use permits (Appeal Record, Docs. 2 and 3). Please note that both appellants paid their Bill for Collection. The bills reflected the lot value determined by appraisal as directed by Forest Service policy: Federal Register Vol. 59, No. 105, June 2, 1994. (Appeal Record, Doc. 22). This appraisal was completed on September 18, 1997 by Ms. Kim Johnson, ARA, Phoenix, AZ, under contract number 53-84M-5-00433 awarded by the Forest Service. Appellants disagreed with the appraisal results, and had a second appraisal done at their own expense. Mr. Tom Stuckey, MAI, Missoula, Montana, was hired by the Georgetown Lake Homeowner Association (GLHA) and Kaiser Lake permittees to complete a second appraisal report on the recreational residence "typical lots" near Georgetown and Kaiser Lakes. Based on the findings in Mr. Stuckey's appraisal, the Kaiser Lake permittees disagreed with the appraisal conclusions of the Forest Service appraisal completed by Ms. Kim Johnson. The Forest Service rejected Mr. Stuckey's appraisal because it did not meet Forest Service standards. (Appeal Record, Doc. 30). Appellants did not have the second appraisal redone to comply with Forest Service standards. Reasons for the appeal are disagreements with the Forest Service appraisal, and with the Forest Service disapproval of the second appraisal.

The Pintler District Ranger is unique on the Beaverhead-Deerlodge in having authority to reissue recreation residence permits. This presents a problem in the permit appeal process. It makes the appeal reviewing officer and the person in charge of the appraisal of the fees the same person, the Forest Supervisor. In order for the appeal to be reviewed by people not involved in the appraisal, the appeal was forwarded to the Regional Appeal Deciding Officer, Kathy McAllister. (Appeal Record, Doc. 4).

Decision Documentation Addressing Decision Being Appealed:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 3	2720 decision letter dated 1-24-00 transmitting Bills for Collection to recreation residence permit holders for their special use permit.
Document 2	2720/5410 letter dated May 29, 1998 notifying permittees of appraised values of their lots and associated Bills for Collection
Document 22	Federal Register Vol. 59, No. 105, June 2, 1994.
Document 30	John Hickey's Appraisal Review dated 1-13-00 recommending disapproval of Stuckey's appraisal
Document 4	Representative 1570 letter acknowledging receipt of appeal and informing appellants their appeal will be forwarded to the Regional Appeal Deciding Officer, Kathy McAllister.

Background Information

Recreation residence lots are appraised at 20-year intervals. Similar lots are combined into a single group and one typical lot is appraised per group. The appraisal provides an estimate of fair and equitable cash market value for a typical lot (rather than all individual lots) within groups that have essentially the same or similar value characteristics. The value estimate for the typical lot is then applied to all lots in the group. In the appraisal process, lots are treated as if in fee ownership and restricted to a recreation residence lot use. Holder provided improvements on and to the lot are excluded from the appraisal.

Kaiser Lake lots were grouped into one group. Lot 3 was appraised as the typical lot.

Appeal Resolution Meeting

Recreation residence permittees were involved throughout the appraisal process. They were also involved in attempts to resolve the issues surrounding their appeals of their recreation residence lot fee. Appellants were invited to a meeting that was held on March 20, 2000 to discuss what had been done to date on the appraisals and to discuss possible resolutions to the appeals. (Appeal Record, Docs. 4, 13). A follow-up letter was sent to all appellants on March 31, 2000 summarizing what happened at the March 20 meeting. That letter included a form on which the appellant could indicate if they would like to participate in the process outlined at the meeting (Appeal Record, Doc 14). Both appellants indicated they wanted to participate in the process. At the March 20, 2000 meeting, I agreed to try to meet with Forest Service review appraiser John Hickey and contract appraiser Tom Stuckey who was hired to conduct second appraisals for several appellants. I also agreed to take an average between the Forest Service appraisal and Mr. Stuckey's appraisal *if* Mr. Stuckey's appraisal was brought up to Forest Service standards in a reasonable timeframe.

On April 20, 2000, I met with the two appraisers to discuss their positions on four issues: fair market value differences; lake frontage disagreements; correlation between size of the lot and lot value; and differing dates of valuation. After lengthy discussion, Mr. Stuckey said he would not revise his appraisal to meet Forest Service specifications. I sent a copy of my notes from that meeting to the appellants (Appeal Record, Doc 15). Mr. Stuckey disagreed with some of my notes from that meeting (Appeal Record, Doc. 16). In this letter I told the appellants that I had not abandoned the idea of allowing appellants another attempt at a third contract appraisal by a qualified appraiser. I asked them if they would like to proceed with a third appraisal. I did not receive a response from either of the appellants. Therefore, I proceeded with processing their appeals (Appeal Record, Doc. 12).

Decision Documentation Addressing Attempts At Appeal Resolution:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 16	Letter from Tom Stuckey dated 5-25-00
Document 4	Representative 1570 letter acknowledging receipt of appeal and informing appellants of the 3-20-2000 meeting.
Document 13	Attendee list from March 20, 2000 meeting
Document 14	Representative 1570 letter dated 3-31-00 to all appellants summarizing March 20 meeting. Includes a form for the appellant to indicate if they would like to participate in the process.
Document 15	Representative 1570 letter dated May 16, 2000 to all appellants summarizing the meeting between the Forest Supervisor and the two appraisers. Includes a form for the appellant to indicate how they would like to proceed with their appeal.
Document 12	Representative 1570 letter dated June 13, 2000 informing appellants the Forest was proceeding with the appeals process.

Decision Documentation Responding to Points of Appeal

Contention 1: *The fair market value of appellants' lots is the one determined by Tom Stuckey, MAI, RM, State of Montana General Certification No. 70.*

Decision Documentation Addressing Contention 1:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 2	2720/5410 letter dated May 29, 1998 notifying permittees of appraised values of their lots and associated Bills for Collection
Document 18	2720 letters, various dates, to those who requested a second appraisal. Letter transmits Recreation Residence Lot Appraisal Specifications and applicable Federal Register direction.
Document 26 Page 4	Real Estate Appraisal of Kaiser Lake Recreation Residence Sites – prepared by K. Johnson
Document 29	Standard Appraisal Review Report of Ms. Johnson's appraisal dated 3-30-98
Document 31	Real Estate Appraisal of Georgetown Lake and Kaiser Lake Recreation Residence Sites – prepared by T. Stuckey
Document 22 Page 1	Federal Register Vol. 59, No. 105, June 2, 1994.
Document 30	John Hickey's Appraisal Review dated 1-13-00
Document 15	Representative 1570 letter dated May 16, 2000 to all appellants summarizing the meeting between the Forest Supervisor and the two appraisers. Includes a form for the appellant to indicate how they would like to proceed with their appeal.

Appellant's lot values were determined by appraisal as outlined in the Federal Register, Volume 59, No. 105, 33.3, dated June 2, 1994 (Appeal Record, Doc. 22, Page 1). The first appraisal was completed on September 18, 1997 by Ms. Kim Johnson, ARA, Phoenix, AZ, under contract number 53-84M-5-00433 awarded by the Forest Service. Ms. Johnson's appraisal was then reviewed and accepted by John Hickey, ARA, Regional Review Appraiser, in conformance with Federal Register direction – Volume 59, No. 105, 33.32. (Appeal Record, Doc. 29). Appellants disagreed with the appraised values of the typical lots (Appeal Record, Doc. 26, Page 4), and had a second appraisal done at their expense. The Forest furnished specifications for the second appraisal (Appeal Record, Doc. 18). Mr. Tom Stuckey, MAI, Missoula, Montana, was hired by the Georgetown Lake Homeowner Association (GLHA) and two Kaiser Lake group permittees to complete a second appraisal report on the recreational residence typical lots near Georgetown and Kaiser Lakes (Appeal Record, Doc 31). Mr. Hickey completed a review, dated January 13, 2000, of the Self Contained Appraisal Report written by Tom Stuckey. In his appraisal review, Mr. Hickey recommends disapproval of the Stuckey appraisal. Mr. Hickey said "In my opinion, this report cannot be used for Federal use due to 1) the assumption that the lots are undevelopable, 2) the date of the appraisal (November 30, 1999) should match the date of the first appraisal (September 18, 1997) and 3) the incorrect assumption that there is private ownership between the cabin sites and the lake" (Appeal Record, Doc. 30, page 6).

I met with both appraisers on April 20, 2000 to discuss their differences (Appeal Record, Doc. 15, page 2). At that meeting Mr. Stuckey agreed that without the discount factors he used, the two appraisals would have been very close in value. He countered that, in his opinion, the Forest Service Recreation Residence Lot Appraisal Specifications contradict the "Uniform Standards of Professional Appraisal Practices "(USPAP), by which he is bound. He contends that USPAP standards oblige him to discount for the undevelopable lot size and the fact that lots do not extend to the water's edge. Mr. Stuckey said he was unwilling to provide an appraisal meeting Forest Service specifications. He said there is a way he could display his appraisal data according to Forest Service specifications. He would display the USPAP method and the Forest Service specifications method. He would then conclude that the USPAP method was the only valid one. Mr. Stuckey stated this display would not provide an appraisal that meets Forest Service standards. (Appeal Record, Doc. 15)

Because the appraisal conducted by Ms. Johnson follows the Forest Service Recreation Residence Lot Appraisal Specifications and was reviewed and accepted by Mr. Hickey, the Regional Review Appraiser, I feel Ms. Johnson's appraisal is the only valid appraisal we can use for calculating permit fees.

Contention 2: The lots are undevelopable. Appellants contend the Forest Service appraiser ignored state and county zoning laws relative to the development of property for parcels under one and two acres in size. They feel their lots will not accommodate the development of a residence. If a purchased site will not accommodate a residence, the value of the site is less than one which will.

Decision Documentation Addressing Contention 2:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 18	2720 letters, various dates, to those who requested a second appraisal. Letter transmits Recreation Residence Lot Appraisal Specifications and applicable Federal Register direction.
Document 23, Page 5	Recreation Residence Lot Appraisal Specifications
Document 30, Page 4	John Hickey's Appraisal Review dated 1-13-00
Document 26	Real Estate Appraisal of Kaiser Lake Recreation Residence Site – prepared by K. Johnson

The Recreation Residence Lot Appraisal Specifications provide direction for conducting appraisals and second appraisals on recreation residence lots. I furnished a copy of these specifications to the permittees that requested a second appraisal. (Appeal Record, Doc. 18). The specifications furnished to the permittees were drafted from FSH 2709.11.

The Recreation Residence Lot Appraisal Specifications, section 2.46, Item 8, clearly state “The final estimate of value shall be on the basis of the total value for the typical lot, rather than a value per square foot, per front foot, etc. Normally, the unit of comparison in the appraisal of recreation residence lots shall be the lot. Permitted size is not an overriding factor where only one residence is allowed on a site. National Forest recreation residence lots often enjoy a much greater effective area than the permitted area”. (Appeal Record, Doc. 23, page 5). Mr. Hickey’s Appraisal Review (Appeal Record, Doc. 30, Item 6, page 4) addresses this “size” issue. He states, “When the first contract appraiser analyzed comparable sales in this area, she found that buyers are purchasing sites that will accommodate a residence and purchases are not being made on a strict per-acre basis. Since land is being purchased on a site basis and not strictly a per-acre basis, value was determined by this premise with size not being a primary consideration”. Ms. Johnson believes there may be some market recognition for size. However, it is very subtle and she does not believe the difference can be reliably quantified. She says it should be noted that overall, the subject lots are slightly smaller than the sales. However, the effective size of the subject lots is similar to the sales. In the private subdivisions, the lots are contiguous to one another and usually are bounded on all sides by neighboring lots. The subject lot does not share a boundary with an adjoining lot. According to the plat of the Kaiser Lake group, the other lot in the group is a short distance from the subject. In addition, the subject is bounded on all other sides by unpermitted National Forest land. This enhances the effective size of the lot. (Appeal Record, Doc. 26, page 26). This analysis demonstrates the lots **are** developable.

Ms. Johnson considered state and county zoning laws relative to the development of property for parcels under one and two acres in size. Ms. Johnson noted the lot has no utilities available. Septic systems or outdoor toilets are the normal means of sewage disposal. Because of the lake, there are fairly strong septic system requirements in this area. Some of the sales are marketed with accommodations to ensure septic systems that comply with environmental requirements can be constructed. The property is to be appraised under the more stringent of the local zoning or the permit restrictions. There is no applicable local zoning so the permit restrictions are considered to be more stringent. (Appeal Record, Doc 26, pages 13). She also notes “in some cases because of size, shape, soil conditions, or proximity to the lake, the subject lot, as designated on the plat, may not support a septic system that complies with environmental regulations. The Forest Service policy regarding this situation is to allow the permittees to occupy additional Forest Service land back from the lake in order to comply with environmental requirements. The Forest Service is generally receptive to this idea.” (Appeal Record, Doc 26, pages 26, 28, 29). The Recreation Residence Lot Appraisal Specifications section 2.46, Item 9 acknowledge the government often authorizes off lot improvements on non-permitted land in addition to the on-lot residence structure. Ms. Johnson applied a minus 20% adjustment to the sales with electricity to account for the absence of electricity at the subject lot.

Mr. Hickey states in his Appraisal Review (Appeal Record, Doc 30, Item 6, page 4) that even though the county zoning laws require at least 1.0 acre in Granite County and 2.0 acres in Deerlodge county before sewer and water systems may be developed, the Forest Service recognizes that the permittees enjoy a much larger area than the permitted area. Also, lots were surveyed and permitted much earlier than the local zoning laws were established. Consequently, the “undevelopable lot size” assumption is incorrect.

Contention 3: *The lots do not have lake frontage. However, the Forest Service’s appraiser identified the lots as having lake frontage.*

Decision Documentation Addressing Contention 3:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 2	2720/5410 letter dated May 29, 1998 notifying permittees of appraised values of their lots and associated Bills for Collection
Document 23, Page 5	Recreation Residence Lot Appraisal Specifications
Document 30, Page 4	John Hickey’s Appraisal Review dated 1-13-00
Document 26	Real Estate Appraisal of Kaiser Lake Recreation Residence Site – prepared by K. Johnson

The Recreation Residence Lot Appraisal Specifications, section 2.46, Item 9, address the lake frontage issue. They state that private transactions typically convey the full use and enjoyment of all the land down to the actual frontage on a natural attraction subject to local planning and zoning setback requirements and public safety zones. Similarly, shoreline strips or feature protection zones are retained by the government to adequately provide for the incidental and

emergency use of the public but not to the exclusion of the holders effective use area. In other words, if the permitted area does not extend to the edge of the lake, stream, or other natural attraction, and a public use strip exists between the lot boundary and the natural feature, the appraiser is to consider the effective area of the authorization and not merely the described lot itself. (Appeal Record, Doc 23, page 5).

Mr. Hickey clarifies this situation further in his Appraisal Review. In the following sentence, the appraiser Mr. Hickey refers to is Mr. Stuckey. “The second assumption that must be discussed is the fact that the appraiser states that there is private ownership between the cabin site and the lake on several of the typical lots. Thus, the appraiser discounted some of the typical lots for lack of lake frontage. This is a misconception made by the appraiser as the land between the cabin site and the lake is owned by the Federal Government, not a private individual. Since the Federal Government owns the land that is between the site and the lake, the typical lots are recognized to have lake frontage”. (Appeal Record, Doc. 30, Item 6, pages 4-5).

Ms. Johnson assessed the typical lot with regard to proximity to Kaiser Lake and lake frontage. Lake view sales were used in the direct comparisons with the lake view subject lots, and lake frontage sales were used in direct comparison with the lake view subject lots. Ms. Johnson identifies the range of sale prices for lake view lots as \$42,500 to \$65,000. The range of sale prices for lake frontage lots is \$75,000 to \$85,000. Differences in “quality” of lake frontage were addressed by bracketing. (Appeal Record, Doc. 26, page 24).

Ms. Johnson identified the site as fronting Kaiser Lake. The lot has a view of the lake – screened by trees. She stated the subject lot, because of its slightly greater distance from the lake, is probably less desirable than most of the lake front lots researched in the area sales. However, it does have direct access across adjoining National Forest land, so it is more desirable than some of the lake view lots. (Appeal Record, Doc. 26, Page 24).

The only lake frontage sales in the subject area were located on Georgetown Lake. Ms. Johnson felt a location on Georgetown Lake is superior to a location on one of the smaller area lakes such as Kaiser. Therefore, she relied on information from northwest Montana because of the abundance of sales on both large and smaller lakes. The unit of measurement in northwest Montana lake front sales appeared to be price per front foot. She used a range of price per front foot, and adjusted for large versus small lakes. She applied a minus 45% adjustment to the Echo Lake subject lot. (Appeal Record, Doc. 26, Pages 40-41).

Contention 4: Tract value modifications have been made in select cases outside of the contract appraisal process for select tracts. The fair market value of typical lot E (Murto) was reduced because of the size of the lot.

Decision Documentation Addressing Contention 4:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 26, Page 42	Real Estate Appraisal of Georgetown Lake Recreation Residence Sites – prepared by K. Johnson
Document 19	2720/5410 letter dated December 10, 1998 to John Hickey summarizing the changes in the Georgetown Tract E
Document 20	2720 letter dated December 18, 1998 to Tauno and Delores Murto explaining the changes made in the Georgetown Tract E
Document 22 Page 1	Federal Register Vol. 59, No. 105, June 2, 1994.

This contention refers to an adjustment made to lots in a Georgetown Lake group. This issue is addressed in Ms. Johnson's Georgetown Lake appraisal, but not in her Kaiser Lake appraisal.

The Forest initially proposed to use the appraisal groups established for the last scheduled appraisal, which grouped all of Georgetown Lake Tract E into one group. This Tract E contained the Kosena, Murto, Carnevale, and Riley lots. The Murto lot was the typical lot used for appraisal purposes. At the request of Mr. Kosena, the Forest Service decided to take the Kosena lot out of this group because of its wetness problems due to rising water levels resulting from additions to the Georgetown Lake dam. (Appeal Record, Doc. 19). The Forest Service assumed that the Murto lot (Lot 2) would continue to serve as the typical lot for the three remaining lots (Lots 1-3).

Ms. Johnson described the Kosena lot in her appraisal as suffering from serious wetness problems because it is so close to the level of the lake. (Appeal Record, Doc. 26, page 51). There were no sales at Georgetown Lake that had this same situation, so Ms. Johnson used comparisons between lot sales at Hebgen Lake that had wetness problems similar to the subject lot (Kosena). She applied an adjustment of minus 40% to the sales to account for the wetness of the subject lot. She did not make an adjustment for lot size.

When the contract appraisals were completed, the Lot 2 permittees (Tauno and Delores Murto) questioned the disparity in appraised values between their lot and the immediately adjacent Lot 4 (Kosena). The Murtos strongly disagreed with the Forest Service assessment that the wetness problem was limited to the Kosena lot. The Murtos said the rising water levels affected their lot in the same way as the Kosena lot. They explained the new lake level initially inundated much of their lot and caused their cabin foundation to settle. They further stated they had gone to considerable expense to mitigate the rising water's effects by hauling in truckloads of shore line fill and rip-rap to raise their cabin's foundation. (Appeal Record, Doc. 19).

John Hickey, Regional Review Appraiser, reviewed the Murto lot and found these explanations to be valid. Mr. Hickey contacted the Forest Service contract appraiser Ms. Johnson. She agreed

these previously unknown permittee-provided improvements had significantly influenced her valuation of Lot 2, and the lot value should be discounted accordingly (Appeal Record, Doc 19). The Federal Register (Appeal Record, Doc 22, Section 33.3, Item 3g) says that adjustments for improvements furnished by permittee holders should not be made.

Based on the information supplied by the Murtos and John Hickey, Forest Supervisor Austin concluded there was little difference between Lots 2 and 4. She decided to use Lot 4 (Kosena) as the typical lot to represent all four lots in the tract (Lots 1-4) for purposes of appraisal because the high water situation affected all four lots to some degree, and there was no apparent means to equitably determine differences in the effects on each lot. (Appeal Record, Docs. 19 and 20) This demonstrates the value of the Murto lot was reduced because of wetness problems, and not for size, as is alleged by the appellants.

Contention 5: *There is a correlation between the size of the property and the value of the property.*

Decision Documentation Addressing Contention 5:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 26	Real Estate Appraisal of Kaiser Lake Recreation Residence Site – prepared by K. Johnson
Document 23, Section 2.46, Item 8	Recreation Residence Lot Appraisal Specifications

Ms. Johnson established in her appraisal that there are some variations in sale prices with regard to lot size. However, in the sales of comparable lots that she researched, the larger lot also had more tree cover than the smaller lots. She believes there may be some market recognition for size. However, it is very subtle and she does not believe the difference can be reliably quantified. She says it should be noted that overall, the subject lot is slightly smaller than the sales. However, the effective size of the subject lot is similar to the sales. In the private subdivisions, the lots are contiguous to one another and usually are bounded on all sides by neighboring lots. The subject lot does not share a boundary with an adjoining lot. According to the plat of the Kaiser Lake group, the other lot in the group is a short distance from the subject. In addition, the subject is bounded on all other sides by unpermitted National Forest land. Since the Forest Service is not issuing new permits, these areas will remain vacant for the foreseeable future. This enhances the effective size of the lot. She felt the effective size of the subject lot was similar to the sales and made no adjustments. (Appeal Record, Doc. 26, pages 25-26) 42). Her reports indicate she followed the direction in the Recreation Residence Lot Appraisal Specifications.

The Recreation Residence Lot Appraisal Specifications state, “The final estimate of value shall be on the basis of the total value for the typical lot, rather than a value per square foot, per front foot, etc. Normally, the unit of comparison in the appraisal of recreation residence lots shall be the lot. Permitted size is not an overriding factor where only one residence is allowed on a site. National Forest recreation residence lots often enjoy a much greater effective area than the permitted area.” (Appeal Record, Doc. 23).

Contention 6: Appellants' appraiser was correct in using a more current date of valuation than the Forest Service appraiser used.

Decision Documentation Addressing Contention 6:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 26	Real Estate Appraisal of Kaiser Lake Recreation Residence Site – prepared by K. Johnson
Document 16	Letter from Tom Stuckey dated 5-25-00
Document 22	Federal Register Vol. 59, No. 105, June 2, 1994
Document 23, Section 2.46, Item 8	Recreation Residence Lot Appraisal Specifications
Document 30, Page 4	John Hickey's Appraisal Review dated 1-13-00
Document 15	Representative 1570 letter dated May 16, 2000 to all appellants summarizing the meeting between the Forest Supervisor and the two appraisers. Includes a form for the appellant to indicate how they would like to proceed with their appeal.
Document 18	2720 letters, dated July 14, 1998, to Antonioli and Neal who requested a second appraisal. Letter transmits Recreation Residence Lot Appraisal Specifications and applicable Federal Register direction.
Document 21	1570/2720 memo dated June 22, 2000 to the Appeal Record documenting phone conversation with John Hickey regarding Date of Value

Ms. Johnson identifies the Date of Value of her appraisal as September 18, 1997. The Date of Valuation in Mr. Stuckey's appraisal is November 30, 1999.

The Federal Register (Appeal Record, Doc. 22, Section 33.32, Item 3b) provides direction to subject the holder-furnished appraisal to the same review requirements as the appraisal obtained by the Forest Service. Since the Forest Service appraisal used September 18, 1997 as the Date of Value, the second appraisal should have used the same date.

Mr. Hickey states in his Appraisal Review that the second appraisal should have the same date of value as the first report to be acceptable to the Federal Government. Mr. Stuckey obtained from the Georgetown Lake Homeowner Association the appraisal instructions provided to the Forest Service appraiser. Mr. Stuckey used those instructions in completing his appraisal. However, Mr. Stuckey should have used the same date of value as the first appraisal. (Appeal Record, Doc. 30, page 5). The Forest Service did not provide Mr. Stuckey, in writing, with the Date of Value.

In letters to Mr. Antonioli and Mr. Neal dated July 14, 1998, the Forest Service provided three sets of information for their use in obtaining a second appraisal. This information included the Recreation Residence Lot Appraisal specifications and the applicable Federal Register direction. Mr. Antonioli and Mr. Neal were also informed that the second appraisal must meet the same federal standards as the original contract appraisal. They were advised to review the original contract appraisal, approved by the Forest Service review appraiser, to ensure they understood the factors and market conditions upon which it was based. They were asked to instruct the

appraiser they selected to contact the Forest Service's recreation residence lot review appraiser, John Hickey. (Appeal Record, Doc. 18).

Mr. Hickey informed the forest's appeals and litigation coordinator he was not contacted by Mr. Stuckey prior to Mr. Stuckey beginning his appraisal. Therefore, Mr. Stuckey completed his appraisal without following the procedure outlined by the Forest Service. (Appeal Record, Document 21).

Mr. Hickey also informed the appeals and litigation coordinator that it is common practice when two appraisals are going to be contested, they should be prepared to the same Date of Value. He also said that when he meets with second appraisers, he outlines the specifications to which the appraisal must be conducted, including using the same date of value as the first appraisal.

On April 20, 2000, Mr. Hickey and Mr. Stuckey met with me to discuss their positions on four issues related to the appraisals, one of which was the differing dates of valuation. Mr. Hickey stated it is standard operating procedure to compare appraisals to the same point in time. Mr. Hickey stated in order to produce a valid appraisal for comparison, Mr. Stuckey would need to abandon data from all sales that occurred after the date of the Forest Service appraisal. Mr. Stuckey agreed that appraising to the same date is commonly done in the appraisal business, but stated that in the absence of any written requirement to do it, he elected not to. He agreed it would be possible to conduct an appraisal to the same point in time as the Forest Service contract appraisal, but stated he was unwilling to do it. The notes from this meeting are outlined in a 1570 letter dated May 16, 2000 to Mr. Andrew McFarland (representative letter). (Appeal Record, Doc. 15, page 3).

Mr. Stuckey responded on May 25, 2000 to my letter to Mr. McFarland. (Appeal Record, Doc. 16). In this letter he admits that if appraisal reports are completed with a different date of value, their values may be misleading if the market has changed during that time frame. He said a different date of value could have been completed on the subject properties, however the market data that he disclosed addressing the various characteristics were major issues in the valuation that Mr. Hickey would not accept in the review process. Mr. Stuckey goes on to suggest that perhaps the Forest Service should retain the previous appraiser to do their appraisal report to Mr. Stuckey's date of value.

The Forest Service obtained a valid first appraisal for their use. The appellants disagreed with this appraisal. If they wish to refute the Forest Service appraisal, it is their responsibility to provide a second appraisal to Forest Service standards with the same date of value as the Forest Service appraisal used.

Contention 7: *The Forest Service appraisal is not based upon the fair market value of the rights and privileges authorized under appellants' permits, and therefore is in contravention of 36 CFR 251.57(1).*

Decision Documentation Addressing Contention 7:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 24	36 CFR 251.57
Document 23, Section 2.4, 2.6	Recreation Residence Lot Appraisal Specifications
Document 26	Real Estate Appraisal of Kaiser Lake Recreation Residence Site – prepared by K. Johnson
Document 22 Page 1	Federal Register Vol. 59, No. 105, June 2, 1994.
Document 27	Sale Data Book for Recreation Residence Sites
Document 29	Standard Appraisal Review Report of Ms. Johnson’s appraisal dated 3-30-98

The appellants’ contention is vague. We interpret this contention to mean that permit restrictions have not been adequately recognized in the appraisal.

The Code of Federal Regulations states “Special use authorizations shall require the payment in advance of an annual rental fee as determined by the authorized officer. The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management practices. (Appeal Record, Doc. 24, section 251.57.).

The Recreation Residence Lot Appraisal Specifications direct that “the appraisal shall provide an estimate of fair and equitable cash market value for a typical lot, a lot within a tract or group of tracts, as if in fee ownership and restricted to a recreation residence lot use, excluding all holder provided improvements on and to the lot”. (Appeal Record, Doc. 23, Section 2.4). The specifications go on to direct that “cash market value shall be based upon the typical lot(s) use as a recreational residence homesite and shall be supported by confirmed recent transactions of comparable properties having similar uses, but adjusted for differences from the subject lot(s). (Appeal Record, Document 23, Section 2.46, Item 3).

The Forest Service has given the appellants a rental fee based on the appraisal conducted by Ms. Kim Johnson, who is an accredited rural appraiser and a Montana Certified General Appraiser #487. Ms. Johnson states in her appraisal that “the estate appraised is the unencumbered fee simple title of the typical sites as if held in private ownership, restricted to recreation residence uses, subject to the more stringent of applicable local police powers or permit restrictions of a like nature.” (Appeal Record, Doc. 26, page 8). She defines the scope of the appraisal and discusses the fact that sales, listings, and offers to buy from the subject area were researched. She personally inspected all sales used in direct comparison to the subjects. (Appeal Record, Doc. 26, pages 8,9). She discusses in greater detail the data analysis she conducted to arrive at the fair market value of the rights and privileges authorized. She found that the private sale covenants, conditions, and restrictions (CC&R’s) and the permit restrictions have many similarities. In most cases, developers, purchasers, and property owners see the CC&R’s as a positive attribute. The property owners view the restrictions as a way of maintaining the quality of the neighborhood and enhancing property values. The existence of the CC&R’s and market acceptance of such restrictions compares to the Forest Service permit restrictions that are considered as part of the appraisal, with one exception. The permit restrictions specify the subject sites can only be used as part-time residences and not as primary residences for the holders of the permits. This difference is reconciled by the fact that purchasers of these sites, as well as most other similar sites in the area, are not usually purchasing primary home sites. Once

cabins or homes are built, the sites are used as vacation homes. Since the sites are purchased for part-time use, Ms. Johnson feels they compare favorably with the part-time restriction incorporated in the Forest Service permits. (Appeal Record, Document 26, pages 33-38).

Throughout her appraisal, Ms. Johnson cites the sales she used. This sale data is also contained in the Sale Data Book for Recreation Residence Sites (Appeal Record, Doc. 27)

Ms. Johnson has followed the direction outlined in the Recreation Residence Lot Appraisal Specifications and in the Federal Register, Vol. 59, No. 105, page 28730, section 33.3 (Appeal Record, Doc. 22). Her appraisal is based upon the fair market value of the rights and privileges authorized under the appellants' permits. Her appraisal was reviewed and accepted by Regional Review Appraiser John Hickey. (Appeal Record, Doc. 29).

Contention 8: On several occasions in the Swan Valley of western Montana, the Forest Service accepted appraisals based upon the evidence of undevelopable property. Forest Service Chief Appraiser, Paul Tittman, unilaterally, in an arbitrary and capricious manner, instructed that the previously accepted Swan Valley "undevelopable appraisals" be rejected in an obvious attempt to circumvent and undermine appellants' appraisals.

Decision Documentation Addressing Contention 8:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 30	John Hickey's Appraisal Review dated 1-13-00

We have no knowledge of the Flathead N.F. situation other than what the appellants say. The supposed rejection of Swan Valley appraisals has no bearing on the recreation residence appraisals on the Beaverhead-Deerlodge N.F. We have not revoked previously acceptable appraisals. The Forest Service never accepted the appraisal conducted by Mr. Stuckey because it was not prepared in accordance with Forest Service specifications and standards. (Appeal Record, Doc. 30). We have maintained a consistent approach that the lots are developable. Please reference the response to Contention #2.

Contention 9: The Forest Service Bill for Collection is not based upon an appraisal of the fee simple value of appellants' lots.

Decision Documentation Addressing Contention 9:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 23, Section 2.45	Recreation Residence Lot Appraisal Specifications
Document 26, Page 8,	Real Estate Appraisal of Kaiser Lake Recreation Residence Site – prepared by K. Johnson
Document 22 Page 1	Federal Register Vol. 59, No. 105, June 2, 1994.
Document 2	2720/5410 letter dated May 29, 1998 notifying permittees of appraised values of their lots and associated Bills for Collection
Document 29	Standard Appraisal Review Report of Ms. Johnson's appraisal dated 3-30-98

The Recreation Residence Lot Appraisal Specifications identify the purpose of an appraisal: “The appraisal purpose is a cash market value estimate of the fee simple interest of the National Forest System effective land area authorized by a permit, but without consideration as to how the permit would, or could, affect the fee title of the lot(s) within a recreation residence tract, or the designated typical lot(s) within a recreation residence tract grouping.” The specifications go on to say “Estate appraised is the unencumbered fee simple title of the typical lot(s) as if held in private ownership, zoned to a recreation residence use, and subject to all applicable local governmental police powers. Restrictions imposed by the permit itself must be compared to the local controls on private land and proper adjustments made accordingly.” (Appeal Record, Doc. 23).

The appellants were notified of the appraised values of their lots. (Appeal Record, Doc. 2). The Bill for Collection (Appeal Record, Doc. B) sent to each appellant reflects the fee simple value of their lot which is based on the appraisal conducted by Ms. Kim Johnson, who is an accredited rural appraiser and a Montana Certified General Appraiser #487. Ms. Johnson states in her appraisal that “the estate appraised is the unencumbered fee simple title of the typical sites as if held in private ownership, restricted to recreation residence uses, subject to the more stringent of applicable local police powers or permit restrictions of a like nature.” (Appeal Record, Doc. 26, page 8).

Ms. Johnson followed the direction outlined in the Recreation Residence Lot Appraisal Specifications and in the Federal Register, Vol. 59, No. 105, page 28730, section 33.3 (Appeal Record, Doc. 22). She appraised the unencumbered fee simple title value of the typical sites. Her appraisal was reviewed and accepted by Regional Review appraiser John Hickey. (Appeal Record, Doc. 29). Ms. Johnson achieved the purpose of the appraisal by following the Recreation Residence Lot Appraisal Specifications and the direction in the Federal Register.

Should you have questions regarding the information presented in this letter please contact Cindy Tencick, Appeals and Litigation Coordinator, at (406) 683-3930.

/s/ Peri R. Suenram for
JANETTE S. KAISER
Forest Supervisor

Enclosure: Kaiser Lake Recreation Residence Appeals Record Index

cc:
William Antonioli
Stephen Neal

GEORGETOWN LAKE AND KAISER LAKE RECREATION RESIDENCE APPEALS

APPEAL RECORD DOCUMENTATION

VOLUME 1

SECTION A -- INDEX

DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
1	No Date	Appeal Record Index	3

SECTION B – NOTICE OF LOT VALUES AND ASSOCIATED BILLS FOR COLLECTION

DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
2	5/29/98	Letter from USFS to permittees notifying them of appraised recreation residence lot values	27
	1/21/00	Bills for Collection for calendar year 2000 rental fee for recreation residence lot	27
3	1/24/00	Letter from USFS to permittees transmitting Bills for Collection	1

SECTION C – APPEAL ADMINISTRATION

DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
4	No date	Representative letter from USFS to permittee notifying them appeals will be forwarded to the Regional Appeal Deciding Officer	1
5	4/4/00	Memo to Appeal Deciding Officer requesting extension to 5/1/00	1
6	5/1/00	Letter from USFS to Senator Baucus regarding recreation residence rental fees. Includes enclosure -- a Briefing Statement	4
7	3/2/00	Letter from USFS to appellants re: grouping appeals for one consolidated appeal decision	2
8	4/6/00	Letter from USFS to appellants re: grouping appeals for one consolidated appeal decision	2
9	5/3/00	Letter from USFS to Linda Lombardi transmitting names of appellants	1
10	5/23/00	Memo to Appeal Deciding Officer requesting extension to 8/15/00	2
11	5/23/00	Letter from USFS to appellants notifying	1

		them request for an extension was granted	
12	6/13/00	Letter from USFS to appellants notifying them the Forest is proceeding with the appeals process	1

SECTION D – APPEAL RESOLUTION ATTEMPTS

DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
13	3/20/00	Attendee list for 3/20/00 appeal resolution meeting with appellants	1
14	3/31/00	Representative letter from USFS to appellants re: 3/20/00 resolution meeting	2
15	5/16/00	Representative letter from USFS to appellants transmitting notes from Forest Supervisor's 4/20/00 meeting with appraisers Hickey and Stuckey	5
16	5/25/00	Letter from Stuckey to Forest Supervisor clarifying his position regarding the 4/20/00 meeting	2
17	6/9/00	Letter from Andrew McFarland to Forest Supervisor responding to 5/16/00 letter and requesting mutually-agreed upon third appraisal	2

SECTION E – APPRAISAL CORRESPONDENCE

DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
18	7/14/98	Letters from USFS to appellants who requested a second appraisal – transmits specifications and direction for the second appraisal	26
19	12/10/98	Memo from Forest Supervisor to Hickey re: appraisal changes to Murto and Kosena lots	2
20	12/18/98	Letter from USFS to Tauno Murto re: appraisal changes to his lot	2
21	6/22/00	Memo from Appeals and Litigation Coordinator to Hickey re: Date of Value	1

SECTION F – FEDERAL REGISTER; APPRAISAL SPECIFICATIONS; CFR'S

DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
22	6/2/94	Federal Register, Vol. 59, No. 105	2
23	No Date	Recreation Residence Lot Appraisal Specifications	5
24	No Date	36 CFR 251.57	2

VOLUME 2

SECTION G – GEORGETOWN LAKE APPRAISAL			
DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
25	9/17/97	Georgetown Lake appraisal prepared by USFS contract appraiser Johnson	69
SECTION H – KAISER LAKE APPRAISAL			
DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
26	9/18/97	Kaiser Lake appraisal prepared by USFS contract appraiser Johnson	40
SECTION I – SALE DATA BOOK			
DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
27	No Date	Sale Data Book prepared by USFS contract appraiser Johnson	39
SECTION J – STANDARD APPRAISAL REVIEW REPORTS			
DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
28	3/30/98	Standard Appraisal Review Report for Georgetown Lake, prepared by Hickey	2
29	3/30/98	Standard Appraisal Review Report for Kaiser Lake #3, prepared by Hickey	2
SECTION K – APPRAISAL REVIEW			
DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
30	1/13/00	Appraisal Review of Stuckey's appraisal, prepared by Hickey	6
SECTION L – STUCKEY APPRAISAL			
DOCUMENT NO.	DATE	DESCRIPTION	# OF PAGES
31	11/30/99	Georgetown Lake and Kaiser Lake appraisal prepared by Stuckey	156