



**File Code:** 1570 (251-1)  
#00-01-00-0017  
**Date:** August 9, 2000

Ms. Clair J. Howard  
339 Clark Avenue  
Billings, MT 59101

CERTIFIED MAIL-RETURN RECEIPT  
REQUESTED

Dear Ms. Howard:

This letter is my review decision of your Notice of Appeal (NOA) on the estimated value of your recreation residence, located on Hebgen Lake 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 policies. 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 January 7, 2000, Acting District Ranger Claude Coffin 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 February 12, 2000, you filed your NOA with the Regional Forester, Dale Bosworth. I acknowledged your NOA by letter on February 17, 2000. On March 13, 2000, Supervisor Garber forwarded his Responsive Statement for my use in addressing your specific appeal issues. You received a copy of this statement but have not yet replied to it.

## II. OVERVIEW OF ISSUES AND RELIEF REQUESTED

The following issues and contentions were identified from your NOA:

1. "The new fee represents a 171 percent increase, which we believe is an unfair and extraordinary increase" and that "a fee hike of this magnitude will make it difficult for average-income families like us to continue to



- have the cabin.”
2. Whether it was appropriate for the appraiser to use sales for comparison that were located in Henry’s Lake/ Island Park, Idaho, or Georgetown Lake, Montana without adjusting for “differing locations and for seasonal use.” “We believe that there should be an adjustment for differing locations and for seasonal use.”
  3. That although the appraisal report stated that “if restrictions are greater on the special use permits, that greater restriction is recognized in the amount of the lease rate,” the lease rate is not recognizing those restrictions.

#### Requested Relief:

1. “We believe there should be an adjustment for differing locations and for seasonal use.”
2. “We would like to see our appraisal based on comparable sales in the Hebgen Lake area, with consideration for the restrictions contained in a government permit.”

### III. REVIEW FINDINGS

I have thoroughly reviewed the appeal record, the concerns raised in your NOA, and the Forest’s Responsive Statement that also deals individually with your issues. You have previously been sent a copy of the Forest’s document. The following results of my review paraphrase the discussions contained in the Supervisor’s Responsive Statement.

- 1) You contend that the new fee represents a 171 percent increase. You go on to say that this is an unfair and extraordinary increase. You are also concerned about your ability to keep the cabin in the family.

A contract appraisal of the typical lot (Romsett #5, your lot) 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 contacted the Forest Supervisor seeking information about the second appraisal process. This information was sent to you June 25, 1998. You did not, however, seek a second appraisal. This volume of the Federal Register also gives the policy and background for using the “5 percent” factor for fee determination. This is five percent of the appraised and approved fair market value, which is less than the 8-12 percent common in the private recreation residence rental market. While the same Federal Register issue 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 income bracket.

2) You are concerned that your lot was inappropriately appraised using comparable special use recreation lots in Idaho and on Georgetown Lake. The different locations and season of use are thought to make 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. I believe this was properly done for your lot. 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. The Forest Supervisor's Responsive Statement discusses this issue in some detail.

3) You contend that the new fee level does not reflect restrictions that differ from those on private land.

The Forest Supervisor's Responsive Statement discussed this issue and his statement should be reviewed along with this letter. I cannot improve on his discussion. 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.

#### 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 policies. I find that you had several opportunities to interact with the Forest Supervisor on the value of your recreation residence lot, but elected not to do so. I affirm the Gallatin National Forest Supervisor's decision to base the special use permit fee for your Hebgen Lake 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