United States Department of Agriculture | **Forest Service** | **Northern Region** | **200 E. Broadway P.O. Box 7669 Missoula, MT 59807**

File Code: 1570 (251-1)
#00-01-00-0018

Date: November 27, 2000

Gary B. Helming
5940 Green Meadow
Helena, MT 59602

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear Mr. Helming:

This letter is my review decision of your Notice of Appeal (NOA) on the decision to implement the new Recreation Fee Schedule for your Twin Lake recreation residence lot located on the Beaverhead-Deerlodge National Forest. You were sent a Bill for Collection by the Forest Supervisor on January 10, 2000. At this time you were advised of your right to administrative review (appeal) and your responsibilities in filing that appeal.

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.

SUMMARY

On March 27, 1999, you were notified of the amended appraised value of your Twin Lakes recreation residence lot. Your fee for calendar year 2000 was estimated at 5 percent of this value. You have disagreed with this fee, and I have outlined and responded to your appeal points below. You did not request a second appraisal.

On February 7, 2000, you filed your NOA with Regional Forester, Dale Bosworth. I acknowledged your NOA by letter on February 23, 2000. On March 23, 2000, Forest Supervisor, Janette Kaiser, forwarded her Responsive Statement for my use in addressing your specific appeal issues. You did not provide an optional reply to the Supervisor's Responsive Statement within 20 days of the statement's postmarked date as described in 36 CFR 251.94(c). I notified you by letter on April 17, 2000, that the appeal record for your appeal was closed.

OVERVIEW OF ISSUES AND RELIEF REQUESTED

The following issues were identified from your NOA:

Disagreement with the appraisal due to a lot size error; the fact that your lot is inaccessible for more than half of a typical year; the fact that you do not have utilities at the Twin Lake lot; and the appraiser's comparison of your recreation lot to those lots at Georgetown Lake,
Disagreement with the fair market value of your Twin Lake lot and the fee which is 5 percent of the appraised fair market value,
The State of Montana requires lots to be greater than 1 acre if a septic system is to be built, and
The current appraisal is not an update of an old appraisal.

You have requested relief as follows: That the appraised value of your Twin Lake recreation lot and the subsequently calculated annual fee be reduced.

REVIEW FINDINGS

I have thoroughly reviewed the appeal record and the concerns raised in your NOA. The Forest Supervisor's Responsive Statement presents an inclusive discussion of each of the above appeal points. I agree with the Supervisor's analysis and discussion, and will not reiterate those arguments here. The results of my review summarize these discussions below.

Text in bold print is a quote from your appeal letter.

"I am affected by the amount of the bill, because it is based upon 5% of an appraised value of my leased property, and that appraised value does not reflect the true value of the lot that I occupy near Twin Lakes, Montana."

The issues related to this appeal point are discussed below.

You believe there is a serious error in the accuracy of the appraisal since the lot size is less than described in the appraisal, and your lot's utility is dissimilar to the appraisal comparables.

Please refer to the Forest Supervisor's Responsive Statement for a thorough discussion of this issue. I believe the size issue and the utility of the lot and the peripheral areas have been adequately discussed. Proper and timely procedures were followed during the appraisal process and in rectifying the lot size error. Other associated issues are dealt with in the appraisal on appeal record page 0064 through page 0073, and are reflected in the Responsive Statement.

I will take this opportunity to briefly discuss why the annual rental fee is based on 5 percent of the appraised value.

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 a National Forest recreation residence lot 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 of fulltime occupancy, and the seasonal nature of use are factors the Forest Service considered to create a rent that is reasonable and fair. The Forest Service used 5 percent instead of 8 to 12 percent of the fair market value

which is the factor used by the private market for rental property. I believe the Forest Supervisor has thoroughly discussed these issues and I refer you to her Responsive Statement for additional details.

The State of Montana does not permit construction of new sanitary sewers and well facilities on tracts of land less than 1 acre in size.

The Forest Supervisor discusses this issue in her Responsive Statement under contention #2. She specifically states, "If these features (approach road, rock wall and special use boat dock) have been accommodated outside the permitted lot, a septic system could certainly be accommodated, should one be required." I will also note that there are several alternatives to the standard septic tank and leach field systems that can be accommodated on much smaller areas.

You also contend that the current appraisal is not an update of an old appraisal to reflect recent land values.

The Forest Supervisor's discussion of this issue is very thorough in her Responsive Statement under contention #4. I will emphasize that the current appraisal follows the Recreation Residence Lot Appraisal Specifications, paragraph 2.46, Analysis and Conclusions, number 8, which reads as follows: "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 larger effective area than the permitted area." (Page 0093 of the appeal record). It is my belief that the current appraisal methods were appropriately applied and interpreted by the Forest Supervisor.

DECISION

I find the Forest Supervisor's decision to be reasoned and in conformance with applicable laws, regulations and policies. I affirm her decision and 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 (36 CFR 251.87(e) and 251.100).

I regret that this had to run on so long. This has been a very busy year and I apologize for the delay in acting upon your appeal.

Sincerely,

/s/ Gary A. Morrison

GARY A. MORRISON

Reviewing Officer
Director of Recreation, Minerals, Lands,
Heritage and Wilderness

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Washington, DC 20090-6090

File Code: 1570-1 (L)
00-01-00-0018-A251

Date: December 12, 2000

Mr. Gary B. Helming
5940 Green Meadow
Helena, MT 59602

Dear Mr. Helming:

We received Appeal Reviewing Officer (ARO) Gary A. Morrison's November 27, 2000, decision letter and accompanying documentation. You are appealing Acting Beaverhead-Deerlodge National Forest Supervisor Jack DeGolia's decision to implement a fee increase for your recreation residence special use permit in the Twin Lakes lot area on the Beaverhead-Deerlodge National Forest.

I find the actions and decisions taken by the ARO are consistent with current statutory regulations concerning the fee determination and appraisal process for your special use permit.

Therefore, I have elected not to review this decision. This action is consistent with 36 CFR 251.100(c) of the Secretary of Agriculture's Appeal Regulations, and constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

/s/ Paul Brouha

PAUL BROUHA
Reviewing Officer for the Chief