**United States Department of Agriculture** | **Forest Service** | **Beaverhead-Deerlodge National Forest**

**File Code:** 1570 (251 Appeal) **Date:** July 11, 2000
**Route To:**

**Subject:** Responsive Statement, Georgetown 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 Georgetown 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 |
|---|---|---|
| Ray and Patricia Capp | 00-01-00-0032 | - |
| Richard Carnevale | 00-01-00-0031 | - |
| John Chor | 00-01-00-0022 | - |
| Marvin Cline | 00-01-00-0042 | + |
| Dorothy Dire | 00-01-00-0038 | + |
| Ronald and Catherine Eccleston | 00-01-00-0039 | + |
| Donald L. Gillespie | 00-01-00-0045 | + |
| Paula Jermunson | 00-01-00-0046 | + |
| E.G. Leipheimer | 00-01-00-0027 | - |
| John W. Lillberg | 00-01-00-0025 | - |
| Linda Lombardi | 00-01-00-0028 | - |
| Andrew and Charen McFarland | 00-01-00-0041 | + |
| Michael McMahon | 00-01-00-0021 | - |
| Blaine and Janet Messer | 00-01-00-0023 | - |
| David Micheletti | 00-01-00-0029 | - |
| James Miller | 00-01-00-0033 | - |
| William Morley | 00-01-00-0024 | - |
| Norman and Patricia Olson | 00-01-00-0043 | + |
| John Pahut | 00-01-00-0050 | + |
| Ed Riley | 00-01-00-0066 | |
| Patrick Riordan | 00-01-00-0067 | |
| Nanci Taylor | 00-01-00-0034 | - |
| Ralph and Kay Warnstrom | 00-01-00-0030 | - |
| Kirk and Joanne Wells | 00-01-00-0026 | - |
| Mildred Williams | 00-01-00-0048 | + |

These 25 appeals are being grouped together under one responsive statement because their appeal points are identical, with one exception. Only Michael McMahon raised contention 4. 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 appeals marked with "-" were grouped by the R.O. in a letter dated March 2, 2000 (Appeal Record, Doc. 7). These groupings differ slightly from the grouping used for this responsive statement.

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.

When the appellants received identical letters 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 7** | **1570 letter dated March 2, 2000 informing appellants their appeals will be grouped by the R.O.** |
| **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 all the 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 17, 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) 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 GLHA members disagreed with the appraisal conclusions of the Forest Service appraisal completed by Ms. Kim Johnson. The Forest Service rejected Mr. Stuckey's second 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 5-29-98 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.

Georgetown Lake lots were grouped into six groups following groupings set during the last appraisal cycle. Changes reflected permittee information that was provided as part of the current process.

The following table shows the typical lot appraisal used for each appellant.

| Appellant | Appeal # | Georgetown Group | Typical Lot |
|---|---|---|---|
| Ray and Patricia Capp | 00-01-00-0032 | 4 | Gillespie |
| Richard Carnevale | 00-01-00-0031 | 8 | Kosena |
| John Chor | 00-01-00-0022 | 1 | Eva |
| Marvin Cline | 00-01-00-0042 | 4 | Gillespie |
| Dorothy Dire | 00-01-00-0038 | 7 | Miller |
| Ronald and Catherine Eccleston | 00-01-00-0039 | 2 | McFarland |
| Donald L. Gillespie | 00-01-00-0045 | 4 | Gillespie |
| Paula Jermunson | 00-01-00-0046 | 4 | Gillespie |
| E.G. Leipheimer | 00-01-00-0027 | 5 | Leipheimer |
| John W. Lillberg | 00-01-00-0025 | 2 | McFarland |
| Linda Lombardi | 00-01-00-0028 | 1 | Eva |
| Andrew and Charen McFarland | 00-01-00-0041 | 2 | McFarland |
| Michael McMahon | 00-01-00-0021 | 2 | McFarland |
| Blaine and Janet Messer | 00-01-00-0023 | 4 | Gilespie |
| David Micheletti | 00-01-00-0029 | 2 | McFarland |
| James Miller | 00-01-00-0033 | 7 | Miller |
| William Morley | 00-01-00-0024 | 1 | Eva |
| Norman and Patricia Olson | 00-01-00-0043 | 1 | Eva |
| John Pahut | 00-01-00-0050 | 2 | McFarland |
| Ed Riley | 00-01-00-0066 | 8 | Kosena |
| Patrick Riordan | 00-01-00-0067 | 2 | McFarland |
| Nanci Taylor | 00-01-00-0034 | 2 | McFarland |
| Ralph and Kay Warnstrom | 00-01-00-0030 | 7 | Miller |
| Kirk and Joanne Wells | 00-01-00-0026 | 4 | Gillespie |
| Mildred Williams | 00-01-00-0048 | 2 | McFarland |

**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). All 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. All those who responded said "no", they wanted to resume their appeal instead. Based on their desires, I proceeded with processing their appeals (Appeal Record, Doc. 12).

I then received a letter dated June 9, 2000 from Andrew McFarland requesting a mutually-agreed-upon third appraisal (Appeal Record, Doc 17). Direction in the Federal Register (Appeal Record Doc. 22) allows the Forest Supervisor to seek a third appraisal when requested. However, a third appraisal should only be sought after two valid appraisals indicate a disparity in value and after the two appraisers have attempted to resolve the disparity. (Appeal Record, Doc. 22). In this case, the Forest Service appraisal is the only one that meets standards. The appellants' appraiser has declined to supply a second appraisal that complies with Forest Service standards. Thus, Mr. McFarland's suggestion of a third appraisal is inappropriate at this point in the process. Please advise me if the Regional Forester wishes for a third appraisal to be completed, financed jointly by the Forest Service and the Georgetown Homeowners Association.

**Decision Documentation Addressing Attempts At Appeal Resolution:**

| APPEAL RECORD REFERENCE | SUBJECT MATTER |
|---|---|
| **Document 16** | **Letter from Tom Stuckey dated 5-25-00** |
| **Document 22** | **Federal Register Vol. 59, No. 105, June 2, 1994.** |
| **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.** |
| **Document 17** | **Letter dated June 9, 2000 from Andrew McFarland, permittee, requesting a third, mutually agreed-upon appraisal.** |

**Decision Documentation Responding to Points of Appeal**

**<u>Contention 1</u>:** ***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 25 Page 4** | **Real Estate Appraisal of Georgetown Lake Recreation Residence Sites – prepared by K. Johnson** |
| **Document 28** | **Standard Appraisal Review Report of Ms. Johnson's appraisal dated 3-30-98** |
| **Document 31** | **Real Estate Appraisal of Georgetown 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 9/17/97 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. 25). Appellants disagreed with the appraised values of the typical lots (Appeal Record, Doc. 25, 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 appellants from Kaiser Lake Group 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 17, 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 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 that 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 25, Page 42 | Real Estate Appraisal of Georgetown Lake Recreation Residence Sites – 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. In the Forest Service summer home groups, there are frequently vacant lots among the group. Since the Forest Service is not issuing new permits, these lots will remain vacant for the foreseeable future. In most cases, the backs of the lots abut non-permitted National Forest land, rather than a lot. This also enhances the effective size of the lot. (Appeal Record, Doc. 25, page 42). 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. For the typical lots Eva, McFarland, Gillespie, Leipheimer, Murto, and Kosena, she notes that the presence of a septic system and/or well may be an indication that the subject lot would be physically capable of supporting a septic and/or well system. 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 25, pages 12, 15, 18, 21, 24, 26). She also notes "in some cases because of size, shape, soil conditions, or proximity to the lake, the subject lots, as designated on the plats, are insufficient to allow construction of acceptable septic systems. 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. No adjustments for utilities are needed." (Appeal Record, Doc 25, page 42). 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.

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.

**<u>Contention 3</u>:** ***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 25, Pages 42,** | **Real Estate Appraisal of Georgetown Lake Recreation Residence Sites – 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. 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 each typical lot with regard to proximity to Georgetown 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. 25, page 40).

<u>Eva typical lot</u>: The lot has an attractive view of Georgetown Lake and the permittees have a permit that allows a dock in the lake. The size and spacing of the lots in the subject tract are adequate to provide the site with reasonable privacy for a lake lot. The site is located within a

group of several recreation residence lots that are along the shore of Georgetown Lake. The value of the subject lot should be in the middle of the range of the comparable sales. The site was appraised as a lake view lot, not a lake frontage lot. (Appeal Record, Doc. 25, pages 12 and 43; Addendum II).

McFarland typical lot: The lot has an attractive view of Georgetown Lake. The size and spacing of the lots in the subject tract are adequate to provide the site with reasonable privacy for a lake lot. The site is located within a group of several recreation residence lots that are along the shore of Georgetown Lake. The value of the subject lot should be in the middle of the range of the comparable sales. The site was appraised as a lake view lot, not a lake frontage lot. (Appeal Record, Doc. 25, pages 15 and 44; Addendum II).

Gillespie typical lot: The lot fronts on the lake with the road behind the lot. There is a narrow strip of public land between the lot boundary and the lakeshore. The permittees of this tract have a permit that allows a dock on the lakeshore. Improvements on the lot include a boathouse and dock, although the improvements are not included in the appraisal. Another consideration regarding the subject's lake frontage is the "public access strip" that lies between the permit area and the lakeshore. According to the Forest Service plat, the subject lot is setback slightly from the lakeshore. The sales have full lake frontage. It has been argued on occasion that the public access strip is a detriment to the value of the subject lots when compared to private lots that have full lake frontage. The lot owner still enjoys use of the property to the lake, even though the use may, on occasion, be shared with others. In addition, no one can build a structure on the strip to inhibit the view. In very few instances does the market recognize a reduction in sale prices due to a public access strip between the lot and the water. Ms. Johnson does not believe it is appropriate to make an adjustment for the public access strip between the subject lot and the lakeshore. (Appeal Record, Doc. 25, pages 18, 45, and 46; Addendum II).

Leipheimer typical lot: The lot fronts on the lake and is on Piney Point, which gives it more lake frontage than most lake front lots. There is a narrow strip of public land between the lot boundaries and lakeshore. The permittees of this tract have a permit that allows a dock on the lakeshore. The size and spacing of the lots in the subject tract are adequate to provide the site with reasonable privacy for a lake lot. The lot has more lake frontage than all the comparable sales and is superior in this respect. Another consideration regarding the subject's lake frontage is the "public access strip" that lies between the permit area and the lakeshore. According to the Forest Service plat, the subject lot is setback slightly from the lakeshore. The sales have full lake frontage. It has been argued on occasion that the public access strip is a detriment to the value of the subject lots when compared to private lots that have full lake frontage. The lot owner still enjoys use of the property to the lake, even though the use may, on occasion, be shared with others. In addition, no one can build a structure on the strip to inhibit the view. In very few instances does the market recognize a reduction in sale prices due to a public access strip between the lot and the water. Ms. Johnson does not believe it is appropriate to make an adjustment for the public access strip between the subject lot and the lakeshore. (Appeal Record, Doc. 25, pages 21, 47, and 48; Addendum II).

Kosena typical lot: The lot fronts the lake. There is a narrow strip of public land between the lot boundary and the lakeshore. Another consideration regarding the subject's lake frontage is the

"public access strip" that lies between the permit area and the lakeshore. According to the Forest Service plat, the subject lot is setback slightly from the lakeshore. The sales have full lake frontage. It has been argued on occasion that the public access strip is a detriment to the value of the subject lots when compared to private lots that have full lake frontage. The lot owner still enjoys use of the property to the lake, even though the use may, on occasion, be shared with others. In very few instances does the market recognize a reduction in sale prices due to a public access strip between the lot and the water. Ms. Johnson does not believe it is appropriate to make an adjustment for the public access strip between the subject lot and the lakeshore. (Appeal Record, Doc. 25, pages 26, and 51-53; Addendum II).

Miller typical lot: The lot does not have direct frontage on Georgetown Lake. However, it is fairly close to the lake and has some view of the lake. The site was appraised as a lake view lot, not a lake frontage lot. (Appeal Record, Doc. 25, pages 29 and 54; Addendum II).

The following appellants are incorrect in their statements that the Forest Service appraiser identified their lot as having lake frontage. Their lots were appraised as lake view lots, ***not*** lake frontage lots. The appraised values of their lots coincide with the values of sale prices of lake view lots, not lake frontage lot sales. (Appeal Record, Doc. 2 and Doc. 25).

| **Appellant** | **Appraised value** |
|---|---|
| Chor | $ 48,000 |
| Dire | $ 30,000 |
| Eccleston | $ 48,000 |
| Lillberg | $ 48,000 |
| Lombardi | $ 48,000 |
| McFarland | $ 48,000 |
| McMahon | $ 48,000 |
| Micheletti | $ 48,000 |
| Miller | $ 30,000 |
| Morley | $ 48,000 |
| Olson | $ 48,000 |
| Pahut | $ 48,000 |
| Riordan | $ 48,000 |
| Taylor | $ 48,000 |
| Warnstrom | $ 30,000 |
| Williams | $ 48,000 |

**<u>Contention 4</u>:** ***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 25, Pages 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.** |

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. 25, 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 25, Pages 42,** | **Real Estate Appraisal of Georgetown Lake Recreation Residence Sites – 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 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. In the Forest Service summer home groups, there are frequently vacant lots among the group. Since the Forest Service is not issuing new permits, these lots will remain vacant for the foreseeable future. In most cases, the backs of the Forest Service lots abut non-permitted National Forest land, rather than a lot. This also enhances the effective size of the lot. (Appeal Record, Doc. 25, pages 41 and 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).

**<u>Contention 6</u>:** ***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 25,** | **Real Estate Appraisal of Georgetown Lake Recreation Residence Sites – 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, various dates, to those 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 documenting phone conversation with John Hickey regarding Date of Value** |

Ms. Johnson identifies the Date of Value of her appraisal as September 17, 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 17, 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 first 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 a letter to Mr. Andrew McFarland dated June 17, 1998, the Forest Service provided three sets of information for Mr. McFarland's use in obtaining a second appraisal. This information included the Recreation Residence Lot Appraisal specifications and the applicable Federal Register direction. Mr. McFarland was also informed that the second appraisal must meet the

same federal standards as the original contract appraisal. He was advised to review the original contract appraisal, approved by the Forest Service review appraiser, to ensure he understood the factors and market conditions upon which it was based. Mr. McFarland was 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 that 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, Doc. 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 (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 the Forest Service appraisal used.

**<u>Contention 7</u>:** ***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 25** | **Real Estate Appraisal of Georgetown Lake Recreation Residence Sites – 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 28** | **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. 25, 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. 25, 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 25, 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. 28).

**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.

**<u>Contention 9</u>:** ***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 25, Pages 8,** | **Real Estate Appraisal of Georgetown Lake Recreation Residence Sites – prepared by K. Johnson** |
| **Document 22 Page 1** | **Federal Register Vol. 59, No. 105, June 2, 1994.** |
| **Document 2** | **2720/5410 letter dated 5-29-98 notifying permittees of appraised values of their lots and associated Bills for Collection** |
| **Document 28** | **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. 2) 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. 25, 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. 28). 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: Georgetown Lake Recreation Residence Appeals Record Index

cc:
Ray and Patricia Capp
Richard Carnevale
John Chor
Marvin Cline
Dorothy Dire
Ronald and Catherine Eccleston
Donald L. Gillespie
Paula Jermunson
E.G. Leipheimer
John W. Lillberg
Linda Lombardi
Andrew and Charen Mcfarland
Michael McMahon
Blaine and Janet Messer
David Micheletti
James Miller
William Morley
Norman and patricia Olson
John Pahut
Ed Riley
Patrick Riordan
Nanci Taylor
Ralph and Kay Warnstrom
Kirk and Joanne Wells
Mildred Williams

# GEORGETOWN LAKE
# AND
# KAISER LAKE
# RECREATION RESIDENCE APPEALS

## APPEAL RECORD DOCUMENTATION

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| **2** | **5/29/98**<br><br><br><br>**1/21/00** | **Letter from USFS to permittees notifying them of appraised recreation residence lot values**<br><br>**Bills for Collection for calendar year 2000 rental fee for recreation residence lot** | **27**<br><br><br><br>**27** |
| **3** | **1/24/00** | **Letter from USFS to permittees transmitting Bills for Collection** | **1** |

SECTION C – APPEAL ADMINISTRATION

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| **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** |
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