



File Code: 1570 (251)
#00-01-00-0011
Date: August 9, 2000

Mr. Roald J. Mogen
1602 Mountain View Lane
Livingston, MT 59047

CERTIFIED MAIL-RETURN RECEIPT
REQUESTED

Dear Mr. Mogen:

This letter is my review decision of your Notice of Appeal (NOA) on the estimated value of your recreation residence lot located on Mill Creek 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 policy. This review decision hereby incorporates by reference the entire administrative appeal record.

I. SUMMARY

On December 10, 1999, District Ranger Terri Marceron signed a letter for Gallatin National Forest Supervisor David P. Garber notifying you of the fee for your recreation residence for the year 2000. A follow-up letter dated December 21, 1999, advised you of your appeal rights regarding the implementation of the fee.

On December 28, 1999, you filed your NOA with the Regional Forester, Dale Bosworth. I acknowledged your NOA by letter on January 24, 2000. On February 22, 2000, Supervisor Garber forwarded his Responsive Statement for my use in addressing your specific appeal issues. You did not reply to the Supervisor's Responsive Statement by the due date of March 13, 2000.

II. OVERVIEW OF ISSUES AND RELIEF REQUESTED

The following issue was identified from your NOA:

Whether the Appraisal, upon which the year 2000 recreation residence special use permit fee was determined, was unfair, because of the following:

- 1) "Our Mill Creek cabin has limited access.
- 2) "The cabin can be used only a total of six months per year as to the lease agreement."
- 3) "When a fair market value was put on the lot, the appraisal became equivalent to owning the land instead of having a special use permit fee."
- 4) "There are limitations set on our rights to make improvements to our cabins or



construct additional structures.”

- 5) “We are subject to Forest Service approval on potential buyers for our cabin.”

The relief you have requested is “a new appraisal is warranted.”

III. REVIEW FINDINGS

I have thoroughly reviewed the appeal record, the concerns raised in your NOA, and the Forest’s Responsive Statement. The Forest Supervisor has prepared an extensive discussion of each of the above appeal points in his Responsive Statement. I believe you have already received a copy from the Forest. The results of my review summarize these discussions:

- 1) You believe the recreation residence special use permit fee is unfair because, “Our Mill Creek cabin has limited access due to the Mill Creek road closure from January 1 to the end of April or early May, depending upon snow conditions.” It is my understanding that, although given the opportunity on several occasions, beginning in early 1997, to interact with the Forest Supervisor and his staff about the criteria – including access- for selection and grouping of cabin lots for appraisal purposes, you did not respond to these opportunities. Henceforth, the contract appraisal was approved by the Forest Service Review Appraiser, Mr. John Hickey, and then accepted by the Forest Supervisor. You did not contact the Forest Supervisor to register any disagreement with the appraisal nor to express any interest in seeking a second appraisal.
- 2) You are of the understanding that “the cabin can only be used only a total of six months per year as to the lease agreement.” My review of the permit you hold indicates that it does not limit the holder to using the cabin only six months per year.
- 3) You are also concerned that “When a fair market value was put on the lot, the appraisal became equivalent to owning the land instead of having a special use permit fee.” Forest Service policy on this issue is succinctly outlined by the Forest Supervisor in his responsive statement. 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.
- 4) You are concerned that “There are limitations set on our (permit holder) rights to make improvements to our cabin or construct additional structures.” The land upon which your cabin is located is leased and thus is subject to certain restrictions. There is a limit to what a permit holder can do to the land. As described in detail in the Forest Supervisor’s Responsive Statement discussion of above concern 3, the consideration for these types of restrictions for a Forest Service special use permit, as opposed to leasing outright deeded land, is in the five percent (5%) fee amount, as set out by Forest Service policy. This reduction contrasts with the 8 to 12 percent that is generally applied for leasing private land.
- 5) The concern over restrictions on selling the cabin is very similar to 4 above. I answer it with the same argument.

IV. DECISION

I find the Forest Supervisor's decision to be reasonable and in conformance with applicable laws, regulations and policy. I find that you had several opportunities to interact with the Forest Supervisor on the value of your recreation residence lot and failed to do so. I affirm the Gallatin National Forest Supervisor's decision to base the special use permit fee for your Mill Creek 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).

I regret that this had to run on so long 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