

# S. 1938 THE CABIN-USER-FEE FAIRNESS ACT OF 1999

---

## HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE,  
NUTRITION, AND FORESTRY  
UNITED STATES SENATE  
SUBCOMMITTEE ON FORESTRY,  
CONSERVATION AND RURAL  
REVITALIZATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

S. 1938 THE CABIN-USER-FEE FAIRNESS ACT OF 1999

---

MARCH 22, 2000

---

Printed for the use of the  
Committee on Agriculture, Nutrition, and Forestry



U.S. GOVERNMENT PRINTING OFFICE

67-662 CC

WASHINGTON : 2000

---

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

RICHARD G. LUGAR, Indiana, *Chairman*

JESSE HELMS, North Carolina	TOM HARKIN, Iowa
THAD COCHRAN, Mississippi	PATRICK J. LEAHY, Vermont
MITCH McCONNELL, Kentucky	KENT CONRAD, North Dakota
PAUL COVERDELL, Georgia	THOMAS A. DASCHLE, South Dakota
PAT ROBERTS, Kansas	MAX BAUCUS, Montana
PETER G. FITZGERALD, Illinois	J. ROBERT KERREY, Nebraska
CHARLES E. GRASSLEY, Iowa	TIM JOHNSON, South Dakota
LARRY E. CRAIG, Idaho	BLANCHE L. LINCOLN, Arkansas
RICK SANTORUM, Pennsylvania	

KEITH LUSE, *Staff Director*

DAVID L. JOHNSON, *Chief Counsel*

ROBERT E. STURM, *Chief Clerk*

MARK HALVERSON, *Staff Director for the Minority*

# CONTENTS

	Page
HEARING:	
Wednesday, March 22, 2000, S. 1938 The Cabin-User-Fee Fairness Act of 1999 .....	1
APPENDIX:	
Wednesday, March 22, 2000 .....	31
Document(s) submitted for the record:	
Wednesday, March 22, 2000 .....	79

## Wednesday, March 22, 2000

### STATEMENTS PRESENTED BY SENATORS

Craig, Hon. Larry E., a U.S. Senator from Idaho, Chairman, Subcommittee on Forestry, Conservation, and Rural Revitalization, of the Committee on Agriculture, Nutrition, and Forestry .....	1
Baucus, Hon. Max, a U.S. Senator from Montana .....	2

### WITNESSES

#### Panel I

Brouha, Paul, Associate Deputy Chief, National Forest System, USDA Forest Service .....	4
-----------------------------------------------------------------------------------------	---

#### Panel II

Allman, Paul, American Land Rights Association .....	15
Betts, Richard, MAI, ASA, SRA, Betts and Associates .....	17
Corlett, Joe, MAI, SRA, Mountain States Appraisal and Consulting Inc. ....	18
Mead, David, President, Sawtooth Forest Cabin Owners' Association, Twin Falls, Idaho .....	12
VerHoef, Mary Clarke, National Forest Homeowners .....	13

### APPENDIX

#### PREPARED STATEMENTS:

Baucus, Hon. Max .....	32
Allman, Paul .....	61
Betts, Richard .....	66
Brouha, Paul .....	34
Corlett, Joe .....	78
Mead, David .....	42
VerHoef, Mary Clarke .....	51

#### DOCUMENTS SUBMITTED FOR THE RECORD:

Position statement, submitted Hon. Daniel Akaka, a U.S. Senator from Hawaii .....	80
Position statement, submitted by Stanley N. Sherman, Germantown, Maryland .....	81

# IV

	Page
DOCUMENTS SUBMITTED FOR THE RECORD—CONTINUED	
Position statement, submitted by Ted L. Glaub, President, American Society of Farm Managers and Rural Appraisers .....	82
Charts, displaying appraisal changes, submitted by Paul Brouha .....	84
Revised Policy for administering recreation residence permits on the National Forests, submitted by David R. Mead .....	93
Joint statement by former members of the Chief's Committee, concerning Congressional testimony by the U.S. Forest Service in connection with recreation residence fee determination, submitted by Mary Clarke VerHoef .....	110
Specification for the appraisal of Recreation Residence Sites, submitted by Richard M. Betts .....	128
Memorandum, Review, and response regarding re-appraisal of Pettit Lake Recreation Residences, submitted by Joe Corlett .....	140
Nonconforming-Use Properties: The Concept of Positive Economic Obsolescence, submitted by Joe Corlett .....	160

## **S. 1938 THE CABIN-USER-FEE FAIRNESS ACT OF 1999**

---

**WEDNESDAY, MARCH 22, 2000**

U.S. SENATE,  
SUBCOMMITTEE ON FORESTRY, CONSERVATION, AND RURAL  
REVITALIZATION, OF THE COMMITTEE ON AGRICULTURE,  
NUTRITION AND FORESTRY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 3:00 p.m., in room SR-328A, Russell Senate Office Building, Hon. Larry E. Craig, (Chairman of the Subcommittee), presiding.

Present or submitting a Statement: Senators Craig, and Baucus.

Chairman CRAIG. The Subcommittee is called to order. The Senate Agriculture Committee is here today to take testimony on S. 1938.

### **OPENING STATEMENT OF HON. LARRY E. CRAIG, A U.S. SENATOR FROM IDAHO, CHAIRMAN, SUBCOMMITTEE ON FORESTRY, CONSERVATION, AND RURAL REVITALIZATION, OF THE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY**

Chairman CRAIG. Nearly 100-years ago, Congress and the President set up a program to allow American families the opportunity to recreate on public lands in remote cabin settings. It is a wonderful example of American people being connected to our public lands in a responsible way, a way that fits with Gifford Pinchot's vision of our national forests.

Today 15,000 of these sites remain active providing recreational opportunities to generations of families. These cabins stand in sharp contrast in many aspects to modern outdoor recreation, yet are an important aspect of the mix of recreation opportunities for the American public.

While many of us enjoy fast off-road machines or watercraft or hiking in our back country with high-tech gear, others enjoy a relaxing weekend at their cabin in the woods with their family and their friends. The Recreational Residence Program allowed families all across the country an opportunity to use our national forests. This quiet, somewhat uneventful program continues to produce close bonds and remarkable memories for hundreds of thousands of Americans.

But in order to secure the future of the cabin program, this Congress needs to re-examine the basis on which these fees are now being determined. This issue first came to my attention in 1997, when the new base fee in the Sawtooth National Recreation Area

skyrocketed into an alarming five-digit range, an annual fee that could be enough to purchase a lot outside the national forest, and in some instances, to even build a cabin on it. In fact, around 140-lots in the Sawtooth National Forest saw their annual fee catapult up more than 500-percent. On the other hand, some areas saw their fees go down with the new appraisal.

It is obvious now that the Forest Service was appraising and affixing value to the lots being provided to cabin owners as if these lands were fully developed, legally subdivided, fee simple residential lands. In other words, the Forest Service is charging for infrastructure that they have no investment in. My goal is to see that the cabin program remains affordable to American families. Consistent with that goal, S. 1938 sets up a methodology for appraising the cabin, which will determine the value of the use to the cabin owner, not what the market would bear should the Forest Service decide to sell off its assets.

Again, my goal here is to set up an appraisal system that guarantees a fair fee for the cabin owner and taxpayers, and to insure the long-term viability of the program.

I look forward to hearing from our witnesses today, and want to extend a very special thanks to the Appraisal Institute and the American Society of Farm Managers and Rural Appraisers for the time they have spent in the last few weeks to provide valuable professional input on the more technical aspects of the legislation itself.

With that, let me turn to my colleague from Montana, Senator Max Baucus. Max, thank you for coming today.

**STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM  
MONTANA**

Senator BAUCUS. Thank you very much, Mr. Chairman. I thank you for this hearing.

There are a lot of people in our country who face this problem, and I might say in my state, it is particularly acute, because we are such an outdoors state. Everybody in Montana is an outdoors person, everybody. I mean, either we hunt, we fish, or we are in agriculture, or forestry, mining, tourism, recreation, we are an outdoors people. It is just the nature of our state.

And cabin sites are a part of life because we are an out of doors people. I mean, whether it is Labor Day, weekends, whether it is Memorial Day, 4th of July, recesses—recesses for us, 4th of July and vacation for our people—we go to our cabins, or just go just for the heck of it to relax and get away. And in many cases these cabin sites are second, third, maybe fourth generation.

I might say, Mr. Chairman, I remember when I was a kid, a friend of mine, a high school classmate of mine was—he was a real goer. He decided he was going to build a cabin on one of these sites. Forget it. We went out, and first of all, we laid the foundation. We mixed our own concrete, and my gosh, that is heavy stuff when you do not have a concrete mixer and you do it in a wheelbarrow. And then we decided it was going to be a log cabin, so we went out to get our logs. It probably was not the right thing to do, but we found some trees. And so we cut down the trees for logs for our cabin, and then we realized our trees were too big; we could

not lift them up and put them on our truck. They were just too big. So anyway, we set our sights a little lower, and had to cut down some smaller trees, and lo and behold, finally by the end of the summer, we had our cabin. And I must say, Mr. Chairman, it is still there. And it has been used by other people in his family over the years.

In our state, all across the country it seems, folks have sites, and they are cabin sites, and the rental fees are just going through the roof, and clearly, we need to find a solution that is fair and that is fair to everybody, that is fair to the taxpayers, but particularly fair to the owners. This is their way of life, and they love the land and take care of it. I mean, if they are not there, the people who live in the area of the state and take care of the land, then somebody, more likely than not out-of-state, the Federal Government, or whoever it is who is going to be there, it is not the same. It is not what life is, and those people probably would not take care of it as well as the owners do.

We had come up with a normal solution in our state in a different area with a different Federal agency, but it is another example of every situation is different, and they are all unique, but they are all the same. They are all the same in that we need to find a solution where as much as possible, in my view anyway, the cabin owners can continue to have the property. If they are not paying their rents because they go up too high, they can figure out a buy-out solution. But that is not going to be true in all cases. In some cases it is best for the Federal stewardship to prevail, but I think the preference should be for local people, and for the lessees or for the owners for the reasons I just indicated. I believe strongly in this. I know how for many Montanans, and I am sure it is the same in Idaho and some other states, this is their life. I mean, there is not a lot else to do in some of our parts of the country, and this is what we want to do, just to get outdoors, just go to our cabin, and it is that important. Thank you.

Chairman CRAIG. Well, Max, thank you. And now we know why there were clear cut spots.

[Laughter.]

Senator BAUCUS. Mr. Chairman, I must say, it was a very selective cut.

[Laughter.]

Chairman CRAIG. All right, all right. I had never thought of you cutting something that was too big, you could not lift it.

Senator BAUCUS. Well, that was a few years ago.

Chairman CRAIG. I am sure it was. Well, thank you very much for that testimony, and I share with you in the concern that I think westerners and public lands states people express over these kinds of issues. That is why we are here today with this hearing.

Senator BAUCUS. Thank you. And I wish I could stay for the hearing, but I know you will do a terrific job. Thank you.

[The prepared statement of Senator Baucus can be found in the appendix on page 32.]

Chairman CRAIG. Thank you very much, Max.

Now let me ask the Associate Deputy Chief of our National Forest, Paul Brouha, who is with us today, to offer his testimony on

behalf of the U.S. Forest Service. Thank you for joining us. We appreciate your time before the Committee, Paul.

**STATEMENT OF PAUL BROUHA, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, USDA FOREST SERVICE, ACCOMPANIED BY RANDY KARSTAEDT, SPECIAL USES PROGRAM LEADER, AND PAUL TITTMAN, CHIEF APPRAISER, USDA**

Mr. BROUHA. Mr. Chairman, Senator Baucus, good afternoon. Thank you for the opportunity to testify on Senate 1938. I am accompanied today by Randy Karstaedt, our Forest Service Special Uses Program Manager, and by Paul Tittman, our chief appraiser.

Chairman CRAIG. Thank you both for coming.

Mr. BROUHA. Enactment of 1938 would replace the recreation residence fee policy for National Forest System lands and direct the Secretary of Agriculture to establish a new set of guidelines for arriving at an annual fee for the privilege to use and occupy and National Forest recreation residence lot. The proposed stipulated practices would be different from the appraisal standards that all Federal agencies are required to use in assessing fair market value. The administration strongly opposes Senate 1938, and I will address 3 of our most significant concerns in my testimony, but let me first give some background in addition, perhaps to what you identified, Sir.

In 1908 we established cabin tracts and issued special use term permits for cabin owners. And owners were charged an annual rent representing the market value of the land at that time, and as you noted, they took care of that land, and often served us in very good stead in alerting us about fires and rendering emergency aid. The permit allowed the holder to build a structure for recreational purposes, but not to occupy it on a full-time basis as a full-time resident. So the fee is really only for the site, it is not related to the value of the structure. And as you noted, this privilege is extended to approximately 15,000-cabin owners nationwide.

In the 1980s the Forest Service worked closely with the public and permit holders in revising our residence policy, and in 1987 published for public review and comment, proposed revisions to appraisal and fee determination procedures and policies for recreation residence uses. Nearly 3,200 respondents commented. 96-percent were permit holders or associations of holders. 85-percent responded favorably. The regulations were subsequently published and adopted in 1988.

The terms and conditions of every permit direct lots be appraised at least every 20-years. And in 1996 we started a 5-year effort to appraise the fee simple value of all the lots. We will complete that within the next 2-years, using the same appraisal specifications and the procedures today that were actually set and agreed to in 1988.

For the record, I would like to include several charts displaying the changes, this one nationally, as well as in several states, in annual rental fees resulting from the appraisals. The national results from 9,600 appraisals or about 63-percent of the total. More than 58-percent of our holders will experience either a decrease or a relatively moderate increase. Less than 3-percent will experience a



dramatic increase of over 500-percent. The balance will see significant increases averaging a tripling of their fee.

Now, we realize that a sudden rise in user fees can be a hardship. Therefore, once the appraisal is completed, we phase in fee increases that exceed 100-percent over a three-year period. Also, increases in recreation residence fees will be implemented in fiscal year 2000 only to the extent that they do not exceed the 1999 fees by \$2,000. In addition, no fee can be increased sooner than 1-year after the time the Forest Service has notified the holder of the results of the appraisal.

At this time our appraisal evaluation procedures are being evaluated by the Appraisal Foundation, the governing body over all appraisal practices, and we have been given no reason to believe that the foundation will not recognize our appraisal specifications as professionally acceptable.

Mr. Chairman, I will now briefly discuss the specific objections to the legislation.

First, 1938 would exempt the permit fee from fair market value provisions in existing law and regulation. The Congress and the administration have a long-standing policy that the people of the United States receive not just a fair fee, but fair market value for all public lands and resources.

Based on our preliminary analysis, we estimate that the fair fee proposed by Senate 1938 would result in a return of the Treasury between 8 and \$12 million less than fair market value. A significant percentage of our recreation residence permit holders would be paying an annual fee that is less than the fee now being paid, fees that are actually based on appraisals more than 20-years old.

Second, the fair fee would be different than a fair market value rental fee. In a market economy, we rely on the market to determine what is fair. Trying to establish a rental fee without regard to market rates for similar properties cannot lead to a fair outcome, but rather, more likely to a subsidized result. That is not fair; certainly all the permit holders would welcome it.

Moreover, the standard for setting fees would thus be different than the standard set by the Forest Service to assess and collect fees for over 130 other types of special uses governing the National Forests and Grasslands. By exempting recreation residence permit holders from the principle of fair market value rental fees, this bill sets a precedent for other user groups to follow, opens the door, as it were.

Third, Senate 1938 would create a four to five-year period of disruption and inequity in the assessment and collection of fees for recreation residence users. It would require the Secretary to contract with a professional appraisal organization to develop appraisal guidelines and promulgate new regulations, which could take several years.

Senate 1938 would suspend all current appraisals pending the promulgation of those new regulations. In addition, it would provide all permit holders who already have had their lots appraised, an opportunity, within 2-years of the issuance of the new regulations, to request a new appraisal. In the interim, the bill proposes three options for the Forest Service to assess what are characterized as transition fees, and the manner in which the bill proposes

to assess these fees would create fee inequities between permit holders occupying comparably valuable lots during that four or five-year transition period. In sum, most of the 4 million that has been spent on appraisal since 1996 would be lost if Senate 1938 is enacted.

In addition, we estimate it would cost 500,000 to develop new regulations and guidelines, and after that, most of the 9,600 permit holders with completed appraisals would likely request another appraisal, which would cost in the neighborhood of 3- to 4-million additional dollars.

Now, the use of National Forest land for private recreation residences is a privilege afforded to a relatively few number of persons. Taxpayers should be adequately compensated for this private use of public lands. The appraisals we have completed conform to the value of a National Forest System land being occupied by recreation residences. We realize it has increased over the last 20-years, and for some lots with particularly desirable amenities such as being close to water, that value has increased significantly. While there is sticker shock, and we recognize that, we feel we are implementing our fee policy in a manner consistent with Federal laws, agency management direction and sound management principles concerning fair market rental fees for the use of the public's land. And we believe the appropriate course would be to allow us to continue this process.

Thank you for providing me the opportunity to testify, and we would be glad to answer any questions, and especially those of more technical nature if you have any.

Chairman CRAIG. Well, Paul, thank you very much. I am not surprised by your testimony. We have been trying to struggle with this issue for some time to create a sense of equity that I and I think a good many of my colleagues, and certainly some of our resident holders feel is inequitable.

I do have some questions, and I appreciate your response to them. What is your ideal or definition of land in, quote, "native or natural state" in chapter 6 of your handbook? How do you define that? Do you know?

Mr. BROUHA. Mr. Chairman, the native or natural state essentially means that the property would be appraised based on its condition at the point prior to the construction of any structural improvements or ground improvements within the authorized area.

Chairman CRAIG. Would that include access or non-access?

Mr. BROUHA. You are talking about—

Chairman CRAIG. By the definition.

Mr. BROUHA. The permitted area has legal access to it. The physical access in most cases is over system roads. There are some exceptions to that where homeowners' groups have in fact constructed bridges or roads. Wherein the cost of a ground improvement, in or outside of the permitted area, was borne by the permittee or the predecessors, that is disregarded in the appraisal process. Only those features that were paid for by the public or by a purveyor of services like the electric company.

Chairman CRAIG. But as it relates to the definition itself, it is the initial one, the legal—by definition, legal access?

Mr. BROUHA. Yes.

Chairman CRAIG. OK. Would you please explain to the Subcommittee how you instruct your appraisers to take into account the restrictive elements of the recreational residence policy and the special use permit when appraisals are conducted?

Mr. BROUHA. The fee determination process, Senator, is in 2 parts. The first part deals with the value of the site as though unimproved for the use. That does not reflect anything other than the fair market value of that site within a prescribed highest and best use recreation residence, summer home, something in that ilk. The determination—or the recognition of the terms and condition to the permit as opposed to the terms and conditions found in typical land leases is reflected in the 5-percent of land value fee determination. Current return rates based on recent market analyses reflect a range of return rate for real estate of between 8- and 12-percent. The 5-percent would be reflective of the difference, and that was agreed to administratively in the early 1980s as a part of this process of negotiations with the homeowners associations.

Chairman CRAIG. OK. At Pettit Lake in the Sawtooth National Recreation Area, the Forest Service has been systematically terminating or failing to renew cabin permits for decades, then ordering the cabins to be removed. This creates another form of scarcity of cabins or lots available for cabins, contributing primarily toward the increased value of the cabins that remain active in the cabin program. Nationwide, over recent decades, the Agency has ordered elimination of many thousands of cabins from the cabin system, replicating the same consequence of driving up the value of cabins that remain in the system.

I would like to know what plans you have for the future with respect to reducing the number of cabins that are currently active.

Mr. BROUHA. Sir, the Forest Service terminates or revokes no more than 5 or 6 recreation permits annually, and it is done for three primary reasons: the abandonment of the use by the holder; the non-payment of fees; a holder's breach of terms and conditions of the permit; and from the administration's—the land area, sometimes if there is a determination of the need for an alternative public use of the site, that can also lead to a termination of the permit. But we have discontinued a very small number of residence permits over the past 20-years.

Chairman CRAIG. And we could go back into the records and document 5 or 6 a year and no more than that?

Mr. BROUHA. Randy, would you?

Mr. KARSTAEDT. At one time in the 1960s, when the Agency made an administrative decision not to issue any more new permits for new recreation residence tracts, at that point in time we peaked in terms of numbers of authorizations at around 19,000 authorizations. We are down around 15,000 right now. I do not have records with me, but I would venture to say the majority of that reduction has occurred over time, where we in fact have actually conveyed out of fee title of the underlying land to the recreation residence owners.

Now, admittedly, we have also terminated and converted some of these sites to alternative public purposes, where we have identified, through a planning process, that there are other public purposes that might be served in the locale of a particular tract or lot, like

proximity to a trail head, a boat launching area, a campground, a picnic site, that sort of thing.

In the future—and it is in our policy right now—whenever a decision like that is made, it is made through the Forest Land and Resource Management Planning Procedures, public disclosure, comment, notice, and decision making with opportunity to appeal, and in the policy we are obligated to give the holder a minimum of a ten-year advance notice of when the conversion to an alternative public purpose might occur. So to predict what might happen in the future is really dependent on individual land and resource management planning process at the local level.

Chairman CRAIG. You peaked at 19,000 when?

Mr. KARSTAEDT. In the mid 1960s.

Chairman CRAIG. So within a 40-year period or a little less, you have dropped by 4,000.

Mr. KARSTAEDT. Right.

Chairman CRAIG. And you believe most of those were converted to fee simple?

Mr. KARSTAEDT. Most of those, I believe, were—yeah, were converted through a land exchange, most typically, where we convey the fee title to the cabin owners.

Chairman CRAIG. Cabin owners in the Valley View Cabin Tract in the Sawtooth National Forest initially faced much higher fees as a consequence of the Forest Service's appraisal results. The cabin owners contracted with an independent appraiser, a man who is state-certified to conduct appraisals in Idaho, for a second appraisal, as provided by the recreational residence policy. The appraisal value of the typical lot at Valley View turned out to be much lower in the second appraisal than the Forest Service's initial appraisal, resulting in a substantially lower fee. The Forest Service accepted the results of the second appraisal, yet nearby, at Pettit Lake in the Sawtooth National Forest, a second appraisal was also conducted by another Idaho-certified appraiser, and the Forest Service has sat on the record, the second appraisal, for over a year without making a decision.

Let me ask a couple of questions specifically to this, if you are knowledgeable of this situation. What do you intend to do at Pettit Lake, and could you also tell us whether the Forest Service appraiser or appraisers who conducted the initial appraisal of the Valley View tract, and at the Pettit Lake tract, were certified by the State of Idaho to be conducting appraisals in our state?

Mr. BROUHA. Mr. Chairman, all Forest Service staff appraisers are certified in a state under OMB 9207, and because of the scope of the jurisdiction, we are only required to be certified in a state, meeting the intent of USAP, but every Forest Service staff appraiser holds general certification.

Second, regarding the specifics, the second appraisal is looked at in context with the instructions. If it is prepared to the same standard as our Chapter 6 instructions, and it is well documented, that report would be accepted, and that is part of the appeal process, if you will, or a proxy for the appeal process, and it has worked fairly well in those cases where the second appraisal was written to the same standards.

The second appraisal at Pettit Lake had a number of issues, and I am personally familiar with it. It was an extremely complex process, and the review on the second appraisal will be forthcoming. I think it probably would be inappropriate for me to talk about whether it is accepted or rejected.

Chairman CRAIG. I respect that.

Mr. BROUHA. But I will tell you that there were a number of problems that were associated with that, and the review appraiser—

Chairman CRAIG. When do you expect that to be out? I think that is an appropriate question.

Mr. BROUHA. I would say probably within the next week to 2-weeks. The review appraiser has to wrestle with a lot of tough issues and consulted with me on a whole flock of it. I did not become the reviewer of record, but I did provide substantial assistance in interpreting the policy and procedures. It is very important that those second appraisals be written to exactly the same standard as the first. Otherwise, we end up with divergent opinions every time, and then there is no resolution. So that was the major issue.

We have had a number of cases where the second appraisal has been written; it was written to the appropriate standard, and has been accepted, and resulted in a reduced fee over what the first appraisal suggested.

Chairman CRAIG. No matter how good your appraisal process is, if the result is hundreds or even thousands of cabin owners being forced to sell, would it be your choice to go ahead with the present process or reevaluate the process?

Mr. BROUHA. Mr. Chairman, we have, on the basis of the 9,600 that we have already surveyed, in fact, we do not feel that will be the outcome. Certainly, there are some situations where there may be some appraisals forthcoming around highly attractive lake tracts where we have significant development and appreciation of value, where those value increases have not been matched by our process to increase the fees over time. The sticker shock is going to be pretty evident. There are some ways of mitigating that, perhaps in the future, where we could have a return of an appraisal on a more frequent term than every 20-years. We could also tie the escalator of the rental fee to a county appraisal and note the increase generally in that particular area. There are several ways that we could hopefully resolve that particular, but I think the appraisal process is sound, and I think the concept of obtaining fair market value is a valid one.

Chairman CRAIG. Well, obviously, I am in search of some of the things you have suggested, although those suggestions have not been forthcoming in policy or rule or regulation from the Forest Service. Any time you do not appraise except every 20-years and the circumstances of the area change and somebody gets a 400, 500- or 600-percent increase, sticker shock is evident. And the circumstances of the owner may not have changed. The circumstances of the area may have changed. And to suggest after the fact that, yeah, we could do this or we could that, you know, thank you very much. That is long after the person has either had to sell the cabin, get rid of it or walk away. I do not think that, that serves our prob-

lem, and that is probably why I am sitting here today with a bill, and you are sitting there giving testimony on it. I have sensed a rigidity that I thought was unacceptable on the part of US Forest Service in certain instances. I followed it very closely. I agree with you, the broad argument is there. In this instance, the narrow argument is, in my opinion, unrealistic.

Is it the opinion of the Forest Service that the cabins it administers are equivalent to other vacation cabins on private land?

Mr. BROUHA. Let me have Paul address that, because that is an appraisal question.

Mr. TITTMAN. For the most part the utility that is afforded a cabin holder is equivalent to what an individual on a commensurate piece of private land gets, the difference being ownership. Any time you rent something, the difference is that you pay for it every year, and if you rent it long enough, you will pay for it multiple times, and it makes no difference whether it is a recreation residence or a house in the city. That is just the nature of renting.

Fair market value, as it applies to these—and I would like to digress a little bit if I may, Mr. Chairman?

Chairman CRAIG. Sure.

Mr. TITTMAN. If you look at the total picture, nearly all of the dramatic increases have occurred in and around waterfront properties, as Mr. Brouha stated. Lake effect has a tremendous effect on value. There are not any more lakes, and there is fewer and fewer lots available for those lakes. The demand for that kind of thing is tremendous.

I have been monitoring on an unofficial basis what I would refer to as leasehold sales, those situations where cabin owners sell their cabin to another permittee and we reissue the permit. And in a lot of cases I have been able to determine the actual price paid for the cabin. We find that in the waterfront areas there is a dramatic reflection of leasehold and by definition—I know you are very aware of this—leasehold represents the difference between contract rent and market rent on a cumulative basis. When you see that kind of thing, it can only tell you that the use charge under the prior regimen are not being recognized in the market, and the market is saying they should be substantially higher, and those leaseholds reflect that.

The concern that we have is, is the annual indexing process, and to supplement what Mr. Brouha said, I personally contacted five states, your state among them, spoke to the state departments of revenue. And what I have found is that in the counties where we have occupancy of recreation residence, the states in all cases can provide us a county index that reflects appreciation for this particular class of property on an annual basis. There are ways to utilize that to keep the sticker shock thing from happening once we start with a level plateau, the beginning point of fair market value. So there is a way to mitigate that.

The history—and I have to go back to ground zero—I was involved in the reappraisal of Priest Lake and Ponderay in the 1980s, early 1980, and I was involved in the appraisal of Georgetown Lake in Montana in 1979. In fact, I personally did that appraisal. The evolution of value in those areas has been dramatic. If you were to try and buy a lot on any of those lakes, and there are privately

held lots on both lakes, the price difference is huge, wherein we go to the Black Hills in South Dakota, and for the most part we had values remain static or go down, and these were not water-related properties, but scattered tracts. We had the same thing occur in Montana on the Helena Deer Lodge and Beaverhead Forest, where we had scattered homes that were not water-related.

Once we have established a plateau of fair market value, we can then index annually using localized measures that will reflect that class of real estate in that competitive arena, and avoid one of the major traumas. And I was an advocate of this 20-years ago, and I still am. The issue of IPD was one selected by the homeowners. That was contrary to what the Agency wanted. We wanted to use CPIU because it was more commonly understood, but the IPD is one that was selected as a more conservative index, and what happened was, is where we had dramatic increases in property values, the IPD index that we have been using annually to reflect changes does not——

Chairman CRAIG. Just a moment here. We will let these folks complete.

[Pause.]

Chairman CRAIG. Please continue.

Mr. TITTMAN. Does not under any circumstance reflect changes in the market, either on a subjective basis or on a national basis. As a matter of fact, the IPD formula the Department of Commerce uses has no component of real estate in it. Therefore, its applicability is very questionable. So again, from my perspective as an appraiser, to start with a current value and then go forward with a commensurate index that reflects changes in that class of property in that competitive arena, including Pettit Lake in the Sawtooth or wherever, we are going to be able to stay cyclical.

The other half of this is, is when you index anything for much more than 10-years, you lose context with reality unless you do a market test periodically during that extended time frame, and that has also happened here. We did not revisit value until 18-years had passed from the prior appraisal, and on that premise, using an inappropriate index, you cannot help but have all kinds of serious problems come out of the new numbers. This was destined to happen. It was predicted 20-years ago, and it happened.

Chairman CRAIG. So are you still contending that the current method, settling cabin fees, is the same method that you created in the 1980s?

Mr. TITTMAN. Yes, it is. It is exactly. The appraisal procedure was prepared—my predecessor, Bill Wakefield, worked with a representative of the homeowners' association, I understand an appraiser out of Florida, or a man who had appraisal experience out of Florida, and the handbook was crafted based on their work. We have not changed a period or a comma in that thing ever since. And that is another issue, because technology changes, various and sundry things that have happened that would have given rise to changes and a cleaner definition of "native" and "natural state" to avoid confusion. There is a number of things we could have done, but because of the outstanding agreement, we did not touch that document.

Chairman CRAIG. OK. Well, gentlemen, I think for the short term, that is all the questions I have. I will leave the record open, and I may submit some additional questions in writing for you, but Paul and gentleman, thank you, all of you very much for coming today to testify.

Mr. BROUHA. Thank you, Mr. Chairman.

[The prepared statement of Mr. Brouha can be found in the appendix on page 34.]

Chairman CRAIG. Now let me ask the second panel to come forward if they would, please. David Mead, President of the Sawtooth Forest Cabin Owners' Association from Twin Falls, Idaho; March Clarke VerHoef, National Forest Homeowners, Sacramento, California; Paul Allman, American Land Rights Association, Berkeley; Richard Betts, Betts and Associates, Berkeley, California; and Joe Corlett, Mountain States Appraisal and Consulting from Boise.

Ladies and gentlemen, if you would come forward and take your seats, please.

I would ask for sake of time that we—well, first of all, your prepared statements will become a part of the Committee record, so you can speak from them or abbreviate as you wish, but I would ask that all of you try to stay within the 5-minute limit if you can. And, David, we will start with you, David Mead.

**STATEMENT OF DAVID MEAD, PRESIDENT, SAWTOOTH  
FOREST CABIN OWNERS' ASSOCIATION, TWIN FALLS, IDAHO**

Mr. MEAD. Thank you, Mr. Chairman. I am David Mead of Twin Falls in south central Idaho. Our base economy is from farming, ranching and food processing. As a country banker, retired, and accredited rural appraiser, retired, of the American Society of Farm Managers and Rural Appraisers, I am testifying today in support of Senate Bill 1938, Fairness Cabin User's Fee Act of 1999.

I am here today as President, a volunteer, of Idaho's Sawtooth Forest Cabin Owners' Association, representing recreational resident permittees.

My special use permit allows me a cabin on half an acre of raw, native, natural, undeveloped land on one of the tracts in the forest. All Sawtooth Forest Cabin lots were reappraised in 1996, one of the first in the Nation. We were stunned by the results. Fees in our tract increased 541-percent from \$390 a year, too low, to \$2,500 a year, too high. Each family then was forced to decide whether the limited seasonal use and Forest Service heavy restrictions were worth the fee increases or not. Some cabin owners sold immediately, could not afford what was coming. Most of us got a second appraisal, allowed by the Forest Service, for it was evident that the Forest Service's first appraisal was based on cabin lot being fully developed within legally subdivided neighborhoods as fee simple property, not the raw, undeveloped natural lots with no improvements, as the stated policy of the Forest Service is. My small log cabin my family built, has no electricity, no plumbing, no phone. We have an outhouse and carry water in a bucket up from the creek.

The bill will provide relief to some 15,000-cabin owners in 25-states and Puerto Rico who mostly, suddenly, face alarming and increasingly high fee permits. In our high profile cabin area, the



Pettit Lake Tract, new fees are scheduled to go from roughly \$1,100 a year to \$22,500, and up to \$67,500 a year. These permits contain many Forest Service restrictions on our use of a lot, and I have attached a list of these in my written testimony. The cabin permit is one among other documents that must be read and understood, the values of positive and negative, to be considered during the appraisal process.

However, the major problem is that the appraisal methodology utilized by the Forest Service, in this round has proven to be inconsistent and unreliable, and permittees learn quickly that there is no inclination within the Agency to resolve the several problems that plague the fee determination process. The unquestionable piece of evidence that validated the flaw in the current system is that the Forest Service accepted the results of our second appraisal, setting aside their own first appraisal. It appears that only further guidance from Congress will succeed in sorting out the conflicting Forest Services faces. On one hand Congress and the GAO has directed resource agencies to maximize revenues from Federal lands, and in so doing, the agencies contrived a system that now will capture more than the fair market value from the cabin owners. On the other hand, both Congress and the Forest Service made commitments to the American people to provide ample opportunities for appropriate, affordable recreation on Federal lands, diverse recreational opportunities for average families and individuals with average or lower incomes or pensions, the new cabin fees make unaffordable for most one of the oldest recreational program, the Cabin Program, authorized by Congress in 1915. These policy objectives need not be in conflict. The program has been providing families with affordable recreation for decades.

The legislation preserves that program objective and returns fair market value.

Forest Service cabin lot permit fees are very different, and far less than private lot fee simple rights. As you can see from the large display on the easel over there, we Forest Service cabin owners have very few rights compared with the private owners. One of the biggest differences is that we cannot prevent public access on our lots except within our cabins.

As a banker type, I leave with one fundamental professional observation. Assuming credit worthiness, I would approve a mortgage to the owner or prospective buyer of a fee simple parcel, but even assuming vast riches, no banker would grant a mortgage for the asset that is a cabin authorized on the forest land under this program.

Please support S. 1938. Thank you, Mr. Chairman.

[The prepared statement of Mr. Mead can be found in the appendix on page 42.]

Chairman CRAIG. David, thank you very much.

Now let me turn to Mary Clarke VerHoef. Please proceed.

**STATEMENT OF MARY CLARKE VERHOEF, CHAIR, NATIONAL FOREST HOMEOWNERS GOVERNMENT LIAISON COMMITTEE, SACRAMENTO, CALIFORNIA**

Ms. VERHOEF. Thank you. Good afternoon, Mr. Chairman. My name is Mary Clarke VerHoef. I am the chair of the Legislative Li-

aision Committee and on the Board of Directors of the National Forest Homeowners. Thank you very much for the opportunity to address you today.

The Forest Service recently began updating the special use fee that we cabin owners pay every year. The first area to be completed was the Sawtooth National Forest in Idaho. The new fees were astronomical, some as high as \$30,000 a year. The procedure, as it continued around the country, resulted in other unreasonable fees. Although none were quite as egregious, they were high enough to wonder just who could or would want to pay such a fee for this use. This program has not been the sole province of the rich before. With such fees, we fear it will be. We all agree that we should pay a fair fee, but many of the resulting fees are simply not fair.

In an effort to solve this problem, we joined together with other representatives of recreation residence users to form a coalition. The coalition hired a consulting appraiser to help us analyze the problem. We reviewed the process in many areas of the country. We found errors in procedures and inconsistency in application. The current appraisal method is not the same method as was crafted by the 1980's regulatory revisions.

The current method of setting our annual use fee was based on the concept that a percentage of that fair market value of comparable underlying land in its raw state could be used to determine the value of our use. It was based then on the belief that appraisers for each typical lot or lots in a tract of cabins, could identify sales of comparable privately-held parcels in the same geographic area. Thus, the comparable parcels must be truly comparable.

In order to implement the policy this time around, the Forest Service prepared a new set of guidelines for appraisers. Our review of those guidelines and our review of the resulting appraisals led us to believe that these guidelines, as currently written, mislead the appraiser to use market transactions which are fundamentally not comparable. Where there are no comparable sales, market transactions are being used without the proper adjustments to make them reflective of the cabin lot's value. This results in flawed appraisals, and in some places, excessive values.

Further, the fact that this is an unusual asset, and the unusual method by which the appraisers are to produce a comparable sale when there are few really comparable assets, has made the assignment even more difficult.

Finally, various governmental acts, such as the creation of the Sawtooth National Recreation Area in Idaho and the Government's act of buying up or limiting the use of most of the surrounding land, added an unusual inflationary pressure on local land which requires an adjustment to this method to result in a fair fee for those area.

The bill before us today is intended to remedy the errors we see. It recognizes the cabin program for what it is, not as equivalent to vacation homes on subdivided lots in resort locations. It is aimed at producing reasonable and fair fees for cabin use. The bill includes specific detailed requirements for the appraiser, since it is such an unusual appraisal assignment and its current implementation has revealed so many problems. It is written in a language an

appraiser can understand. It calls for appraisal every 10-years instead of 20, to make sure the Forest Service is getting a fair market value of our use in the event the annual index does not work as expected. It chooses a new index, one more closely tied to local land value, but not one tied to urban use.

In those circumstances where certain governmental acts produce an unfair fee, the bill requires the comparable land analysis to go outside the area influenced by those acts. In those circumstances, the annual index used is a statewide index instead of a local one. In the event there is a further disagreement with regard to the appraisal, a mechanism is provided for a dispute resolution. If the current appraisals are acceptable, as some are, no new appraisal is required. Other transition provisions are also provided.

In conclusion, the high fees resulting from improper application of the underlying policy, if allowed to stand, will change the face of this program, limiting its use to the rich. This program should stay affordable by the ordinary American. This bill is essential to that end.

[The prepared statement of Ms. VerHoef can be found in the appendix on page 51.]

Chairman CRAIG. Ma'am, thank you very much.

Now let me turn to Paul Allman, American Land Rights Association from Berkeley, California. Mr. Allman, welcome.

**STATEMENT OF PAUL ALLMAN, DIRECTOR OF CABIN OWNER AFFAIRS, ON BEHALF OF THE AMERICAN LAND RIGHTS ASSOCIATION, BERKELEY, CALIFORNIA**

Mr. ALLMAN. Thank you, Mr. Chairman.

The American Land Rights Association thanks the Committee for this opportunity to comment on S. 1938.

One, the current appraisal process makes no sense. It is clearly inequitable as well as being blatantly unreasonable. These cabin lots are not for sale. This is not a real estate transaction. This is simply a method of determining a fair user fee for a recreational use.

What are we really talking about? A small site on which a cabin owner can maintain a small summer cabin under strict guidelines at no expense to the Government. What possible sense does it make to have the use fees for the exact same use vary by over 150-times, 15,000-percent? This range of user fees from under \$200 to \$30,000 makes clear the current Forest Service appraisal process is blatantly flawed.

Two. We feel the Agency has made a number of errors in policy interpretation. Through 10-years of negotiation resulting in the National Recreation Residence Policy, the cabin owners were assured that the language of the policy pertaining to cabin fees would never result in permittee lots being appraised as if they were fee simple lots, because the many differences between permitted lots and fee simple lots made them obviously not comparable. We were repeatedly told that the appraisal had to begin with an estimated fee simple value in order to arrive at some form of reasonably objective base figures.

These differences were cited repeatedly to permittees as reasons why the value of the land would not be comparable to fee simple

land, but would reflect the land's "cash market value based upon its use as a recreational residence homesite." That is a direct quote from the policy statement.

But it is now the interpretation of the Agency to appraise every permitted lot as if it is being offered directly for sale on the fee simple market. This has resulted in an increase in fees in some cases of over 1,000-percent. The absurdity of this position is obvious.

If a private landowner were to offer a 20-year lease with the restrictions demanded by the Forest Service, there is genuine question whether anyone would be willing to lease the land at any price.

The real answer to this problem is that the Forest Service should properly instruct its appraisers to recognize the many restrictions and limits included in the permit as is provided in S. 1938.

Three. Contrary to what the Forest Service and others have told you, cabin owners already pay their fair share and more. Recreational residence permittees pay the highest use fees per acre of any of the many uses of the National Forest system. Cabin permittees, even under the old fee structure, were paying over \$2,400 per acre per year, with many paying much more. Under the Forest Service current proposed fees, cabin owners would be paying an average of well over \$8,000 per acre per year. Because recreation permittees, by regulation, cannot restrict or prohibit public use of their lots, the actual permitted area over which they have control consists only of the footprint of their cabin. By any real world real estate standard, they already pay more per square foot than most commercial leases in comparable fee simple areas. This is the single most revenue positive recreation program on the National Forest System.

Four. The Recreation Residence Program is the most successful provider of recreation opportunities managed by the Forest Service. Recreational residences provide more RVDs, recreational visitor days, per acre than any other use of the National Forest System. Because of the nature of the recreation provided, they also overwhelmingly provide the greatest recreation opportunity to the retired, the elderly and the disabled, those Americans which by law the Agency has directed to consider in its programs. Because of the nature of the cabin experience, these cabins are overwhelmingly also a family experience.

Five. Given that the average lot size is roughly one-quarter acre, all of the 15,000 recreation residences occupy less than 4,000-acres of the 192-million acres currently in the National Forest System, roughly 2/1,000ths of 1-percent.

You are also told by the Agency that we are private use of public lands. We are unable to imagine a human use of the public lands that is not private, at least for the period of use. One retired Forest Service officer told us the only public use of the National Forest he could think of was when the military held maneuvers there.

Now, I would like to make an additional comment. Mr. Karstaedt estimated 17,000. The historian in region five tells me that there were over 15,000-cabins in California alone in 1962. There are now less than 7,000. The Forest Service told us, in 1988 there were 15,600-cabins on the National Forest System. They now tell us

there are less than 14,500. These are inconsistent with the information which Mr. Karstaedt has given you, and I thought it should be pointed out. Thank you.

[The prepared statement of Mr. Allman can be found in the appendix on page 61.]

Chairman CRAIG. Mr. Allman, thank you very much.

Now let me go to Richard Betts of Betts & Associates of Berkeley, California.

**STATEMENT OF RICHARD M. BETTS, CALIFORNIA STATE-CERTIFIED GENERAL APPRAISER, BETTS & ASSOCIATES, BERKELEY, CALIFORNIA**

Mr. BETTS. Mr. Chairman, my name is Richard Betts, and I am a California State-Certified General Appraiser, and the principal in Betts & Associates, Berkeley, California. I appreciate the opportunity to present to the Subcommittee my analysis of the difficulties that have arisen with respect to the calculation of fees for occupancy of cabin lots in the National Forest System.

I was retained in 1998 by a coalition of cabin owners to analyze the appraisal methodology and instructions employed by the Forest Service. I am being compensated by the coalition for my appearance here today, but the coalition has exercised no control over my statement, nor whatever replies I might offer in response to questions from the Subcommittee.

As a quick statement of my qualifications to be before you, I would describe myself as a very active appraiser, an MAI, ASA in real estate, and SRA, specializing in complex properties and complex situations, with more than 35-years of experience in appraisal and real estate economics consulting. I hold bachelor of science and master of business administration degrees in real estate and urban economics from the University of California, Berkeley. I have taught extensively. I am the author of a number of books and articles, including several college textbooks. I have testified as an expert witness on very many occasions. I have performed assignments for the US General Accounting Office, US Department of Justice, the National Park Service, the California Auditor General, and numerous other clients.

I also want to give the Subcommittee the same professional certification that was in my report, including that I have no bias with respect to these properties or to the parties involved. My compensation from the cabin coalition was not contingent in any way upon my findings or the outcome. My analyses, conclusions and opinions were developed, and my report is prepared in conformity with the Uniform Standards of Professional Appraisal Practice.

In conducting my analysis, I reviewed some 16-key documents, the Forest Service Recreation Residence Authorization Policy, sections of the handbook, memorandums, correspondence, testimony in earlier congressional hearings, and I also examined in detail the initial appraisal reports and second appraisal reports from cabin tracts in Idaho, Oregon and California.

The primary focus of my analysis was upon the appraisal process itself, including the instructions and their implementation. Unquestionably, major work is needed to clarify the instructions, to remove material that is contrary to the adopted policy, and to guide

appraisers to proper practice in this very complex and unusual setting.

The major problem area that I note is in the definition of the property being appraised. Policy clearly states that the Forest Service is providing raw acreage, but most appraisals are of subdivided lots, and much of the guidance from the Forest Service implies that the appraisal should be of a subdivided lot.

A second major problem is with adjustments for access and utilities, usually provided by the permittees, but incorrectly handled in Forest Service instructions and often in appraisals. In most cases cabin owners put in all of the effort and management and took all of the risk of developing access and utilities and the cabin. Forest Service language leads the Forest Service to capture the cabin owner's investment and the portion of value that results from the cabin owner's effort and risk taking. In addition, the current instructions put the burden of proof on the cabin owners to document who did what many decades ago, which the service never required them to document.

The third problem was with the selection of market data upon which to base the valuation. This usually was because of the first problem I have noted, the incorrect definition of the property being appraised.

The fourth problem was with the adjustment of the market data for relevant differences, and particularly using incorrect or unsupported cost estimates and incomplete data.

Based upon my analysis, I had made recommendations to the cabin owners' coalition for appraisal guideline language intended to provide clear direction to appraisers and resulting in a proper market value appraisal.

Following introduction of the bill, I have had the opportunity to consult with representatives of the Appraisal Institute, and the American Society of Farm Managers and Rural Appraisers and the Appraisal Foundation, and I believe that the bill, with minor changes, will be satisfactory, will comply fully with appraisal standards, will meet the statutory definition of "market value" and correct these appraisal implementation problems.

[The prepared statement of Mr. Betts can be found in the appendix on page 66.]

Chairman CRAIG. Mr. Betts, thank you very much.

Now let me turn to Joe Corlett, Mountain States Appraisal and Consulting, Boise, Idaho. Joe, welcome before the Committee.

**STATEMENT OF JOE CORLETT, CERTIFIED GENERAL REAL ESTATE APPRAISER, MOUNTAIN STATES APPRAISAL AND CONSULTING, INC., BOISE, IDAHO**

Mr. CORLETT. Good afternoon. Thank you, Mr. Chairman. My name is Joe Corlett. I am a resident of Boise, Idaho. I am a certified general appraiser in both the states of Idaho and Oregon. I am also an MAI member of the Appraisal Institute, and I have been in the appraisal business about 26-years, and I am a partner with Mountain States Appraisal and Consulting out of Boise.

Today I am testifying in general support of Senate Bill 1938 for improving the consistency and fairness in the appraisal applications of Federally permitted sites.

My specific experience is with the cabin tracts on Pettit Lake, Idaho, where I acted as the second appraiser, following an original appraisal done by a government appraiser from Ogden, Utah. He valued those sites, natural native values, ranging between 450,000 to \$600,000. I also had the opportunity to review that report, and I could not agree with it, so I was then engaged to conduct my own appraisal according to the specifications set forth by the Forest Service. And based upon my analysis, the natural and native sites had a minimum value of \$83,000 with a maximum value of \$212,000.

It is my general opinion that the errors made in the Government appraisal were really fueled by the appraiser's analysis of leasehold sales or cabin sales that were improved. The difficulty there is that you overlook the externalities created by Blaine County, for example, that has a minimum site size of 10-acres. So the externalities were overlooked in the Government appraisal.

Also, the appraiser is instructed to appraise at the stricter of the police powers, according to the specifications, and these would not even be legal lots. So that is another issue that we might have to deal with. The cabin owners developed these sites. The government did not help. They did not do anything with the infrastructure, to my knowledge, but it was created by the cabin users. So all improvements on and to the land, as per the instructions, created by the cabin owners were deleted in my analysis. In my opinion, the incentives due to the permittees were not deducted in the Government appraisal, so in other words, these permittees are, in essence, paying twice.

A recent transfer of an improved cabin sale was substantially below the base minimum value of a vacant, native and natural site at Pettit Lake, which I thought was interesting. This was an 854-square foot cabin that was in very good condition, very habitable, had a lot of deck area, and it sold below the actual bare land value estimated by the Forest Service.

The instructions issued to me through the Intermountain Region of the Forest Service via a memorandum, which I have attached, from Chief Appraiser Tittman, were contrary, in my opinion, to the original written instructions, where I was told to appraise the natural native land. Also, he instructed me to use—or that I may be able to use the leasehold sales, and use a type of—a residual analysis. This is not recommended in the Uniform Appraisal Standards for Federal Land Acquisitions. So I feel that this memorandum is contrary to the written instructions, and I had difficulty with that.

And, finally, I think if you look at this bill as passing, it would more or less cause the Forest Service not to have different interpretations of their specification and the valuation of these properties. In other words, it would be consistent and much more fair for both the taxpayer and the cabin users.

So I would welcome any questions, and thank you for the privilege of testifying.

[The prepared statement of Mr. Corlett can be found in the appendix on page 78.]

Chairman CRAIG. Well, thank all of you very much. I will ask a series of questions now, and while I may ask it specifically of one

witness, if others feel they have something to contribute to the direction of that question, please feel free to do so.

Ms. VerHoef, would you describe, if you can, a typical owner of one of these cabins, from your experience with the associations?

Ms. VERHOEF. Well, National Forest Homeowners did a survey of its members in January of 1999. 4,600-members received questionnaires. 48-percent of the households responded. 54.7-percent of them are retired. The principal careers included business owners or managers, 14.5-percent; farmers or ranchers, 4.7-percent; construction worker involved people, 5.5-percent; engineers, 9.2-percent; and teachers, 15.6-percent. My personal opinion is that is because they have their summers off.

Chairman CRAIG. Probably.

Ms. VERHOEF. As far as the age is concerned, they are primarily middle-aged to elderly with two or more generations of the family involved in the use of the cabin.

Chairman CRAIG. Have you read the GAO report dated December 1996, entitled "Fees for Recreational Special Use Permits Do Not Reflect Fair Market Value," and if so, can you offer any insight into the GAO's findings? I ask that of you, ma'am, but any of the rest of you who might wish to comment who have read that, go ahead, please.

Ms. VERHOEF. Yes, I have read it. The report's conclusions are incorrect, because the GAO asked the wrong question of the county assessor. The issue is not the market value of the cabin sites, as if they were subdivided, fully developed lots. The cabin sites are to be valued as land in its natural state without lot developments, utilities or access provided by the permittees or at the permittee expense. I think the GAO misunderstood that, and therefore, I suspect that the appraisers misunderstood that too. Sorry, county assessors.

Chairman CRAIG. The Forest Service testified in earlier hearings that the cabin owners agreed to use 5-percent of appraisal value of the cabin lot to determine the fee. Did the cabin owners make such an agreement to your understanding?

Ms. VERHOEF. No, they did not. I attached to my—

Chairman CRAIG. Do you know of any cabin owner group that might have?

Ms. VERHOEF. No. I attached an exhibit to my written testimony, which is a joint statement by the three living members of past members of the Chiefs Committee, which was involved with the creation of the policy. No Forest Service members are left in the Agency from that group. It explains in detail what actually did happen, and clearly shows that there was no agreement. The 5-percent capitalization rate was dictated. It was not agreed to. The IPD was—the driving force was the Agency. The input—this report shows that the current system is not the one to which we agreed. The agency has significantly modified the understandings reached with permittees. The package accepted was changed by withdrawal and revision of the tenure provisions, and by unilateral revision or reinterpretation of the fee provisions. The statement shows clearly what was agreed to and what was not.

Chairman CRAIG. Yes, Mr. Mead.



Mr. MEAD. Mr. Chairman, it was noted by the Forest Service in their testimony that a survey sent out to all the cabin owners back in that time, showed that the cabin owners were for what was presented to them. And in my case and other cabin owners' cases, we were told by our National Forest Homeowners that what they had agree with and what the Chief's Committee cabin owners had agreed with was all right. However, when it actually came down and out in the FEDERAL REGISTER, etc., etc., and understood, we found out that it was not what we thought we were voting for. So therefore those figures are askew.

Chairman CRAIG. Mr. Betts, how do these Forest Service cabin sites differ from privately owned cabin sites, say in the same area?

Mr. BETTS. A typical privately-owned cabin site will have utilities, any necessary grading, access roads, possibly a provision for water, and in a few cases septic systems of some sort or the testing work will have already been performed, so that they are a completely different beast, and would sell at a completely different price than the raw native land that we are talking about here.

The cabin owners themselves are the ones who took on the risk of being able to successfully develop a physical access. They took on the risk of being able to get these lots to perk or in some way handle the sanitary issues. Some of them, in fact, have had to do pumps and bring a pump truck in on a periodic basis. And the same thing with wells. If the first well does not work, you drill a second well, or third well, or in Mr. Mead's case, you fall back on hand carrying the water from quite a ways. Those risks are not present in the typical privately developed lot, simply because buyers of lots do not want to take those risks on. Therefore, the price of that privately-held lot has a major premium in it for both the cost of those differences, but also the risks that have been overcome and the effort that it took to get there. It is a big problem for an appraiser in making that adjustment.

Mr. MEAD. Mr. Chairman?

Chairman CRAIG. Yes.

Mr. MEAD. May I bring out the property rights poster over here on the easel, the bundle of sticks? There is a big difference. For instance, the private one has how many—there is 33 we have listed there, rights that they have, whereas we only can list 6 under our right. And the appraisal of the Forest Service was not allowed, through their instructions from their chief appraiser, to discount any of the ones we do not have that the private do have, the biggest one being, many of us have said, is the fact that our lot, anybody can come out and camp on it. We can keep them out of the cabin, per se, but not even off the front porch, and that is not at all common on private. Matter of fact, in Idaho, as you well know, Mr. Chairman, you might find some buckshot if you try that, whereas we cannot use that. Not that we want to.

Chairman CRAIG. In some instances in these rather bare necessity cabins, I have understood that some people actually don't lock the doors, put good latching systems on them, anticipating that someone might traffic through and otherwise use them, and instead of allowing them to be broken into, they found over the years that to leave them open put them in a safer condition, and that is

a unique private piece of property that allows that, but under certain circumstances I understand that is the case.

Mr. Betts, the bill that we are discussing, 1938, is rather detailed in its appraisal procedures. Would you believe that that kind of detail is needed?

Mr. BETTS. Mr. Chairman, from the appraisals that I reviewed, I reached the conclusion that part of the problem was inadequate direction from the Forest Service, or even direction that I would have to interpret as being accidentally misleading. But part of the problem is that this is a very, very unusual beast for an appraiser to encounter, no matter how experienced they are in rural property. It is also technically very difficult to appraise, as I am sure both Mr. Mead and Mr. Corlett, who are experienced as rural appraisers, can comment on as well as I can.

Given that, it was my belief that it would be helpful to give advisory guidance to appraisers to help steer them towards what they need to do. It may be that part of this can be handled in the definition of the appraisal process or the property being appraised, rather, and material in the appraisal instructions might not need to be as long, but it is very clear, in my opinion, that this matter needs to be clarified, or we will never get good appraisals.

Chairman CRAIG. Mr. Corlett, would you comment on the same question, and also expand to the phrase you used in your testimony called "general support," meaning you give general support to the legislation, specificity as to the procedures and your expression of general support.

Mr. CORLETT. Yes, Sir. Thank you, Mr. Chairman.

I generally support the concept of the bill. I think that there are some language problems in the technical application of Section 6 of that—well, that is in the House side—but it tends to be leading the appraiser more than if—in a way that could be in conflict with the standards, which we are told earlier in the bill that we have to follow. So, we are going to try and work on the language and get the bill where it is practical for the appraisers to use. Is that appropriate?

Chairman CRAIG. Yes.

Mr. CORLETT. The second issue is I think what the appraisers have been missing throughout the country, and especially with Pettit Lake coming into view, is that nobody tells them what to appraise really. What are we appraising? The native natural land is in the language; is it in the instructions. Well, native natural land is not a developed site. And my disparity with the Forest Service is dealing with the difference. They would prefer that we appraise these sites as if developed, with all incentives, and just deduct nominal—virtually nominal expenses for roads, power, telephone, on-site systems. So the real problem has been in focusing on what is being offered by the Government. If the Government developed these sites, then they would be entitled to the return, if they took the risk, but they did not in this case.

Chairman CRAIG. In the Pettit Lake experience, you were talking about lots from 450 to \$600,000 in appraised value by the Forest Service process. Then you had gone in on a second appraisal. Give me the characteristics of a 400 or a \$600,000 appraised lot, size, and how you found them different. My notes say that you found

them to be upwards of 50-percent less of value than what had been appraised by Forest Service appraisers.

Mr. CORLETT. Yes, Sir, Mr. Chairman, that is correct.

Chairman CRAIG. Give me a little more detail for the record in that experience if you would?

Mr. CORLETT. The Forest Service appraiser, I could see him agonizing in his report over the sales of the improved leasehold or the cabins on sites. They were selling for much more than they had sold for in earlier years. So he, I think, had a hard time reconciling how to deduct those improvements from the sales prices that these permittees had paid. So what he did is he went to the Fisher Creek subdivision, which is in Custer County, and allocated improvements out of sales based on their cost or contribution and that is a compliant subdivision. It is not a preexisting, non-conforming use type of situation that exists at Pettit, and that preexisting, non-conforming use is what drives the improved property values. So there is a bonus, if you want to call it that, to the improvements. So the improvements were not allocated correctly in my opinion.

I also deducted in my analysis the incentives due to the risk takers. In this case the risk takers were the permittees, so that is the basis for the disagreement.

Both of us used developed improved conforming site sales on Payette Lake and Priest Lake, and we were aware of those; they were fee simple transactions, and I truly believe that I followed the letter of the instructions by going to the natural native form of the land, what was provided by the Government.

Chairman CRAIG. Mr. Betts, this question may be for you, but, Joe, you can respond to it also. The bill contains very detailed procedures for handling the value contributed by—well, assets like utilities. Why is that necessary?

Mr. BETTS. The first reason, Mr. Chairman, is that Forest Service instructions, and my conversations with Mr. Tittman personally corroborate this, do not accept the concept that the value contribution that a utility system makes to a lot is more than the bare bones cost. I mentioned earlier that the person who puts the system in takes on all the risk, and that may mean very substantial overruns of cost which are now lost in the historical record.

Chairman CRAIG. Sure.

Mr. BETTS. How bad it was, how many alternatives; that is all unknown now. It is just lost ancient history, so to speak. But it is part of the cost basis that anybody buying a lot with that utility pays versus someone who is buying a lot without. It is not just the hard cost; it is also what appraisers call the soft cost. There has to be his or her time for managing this, monitoring the provision of the well or whatever, and taking the risk on. And the Forest Service instructions appear to disregard that, which means that they are way under adjusting for these features when they show up on a lot sale. Given the fact that the Forest Service—

Chairman CRAIG. Under adjusting meaning the situation where value would adjusted down?

Mr. BETTS. Mr. Chairman, let me put it—

Chairman CRAIG. The value for deduction from an overall value expressed?

Mr. BETTS. One starts with a sale price from some type of comparable evidence, and then you must adjust that sale price up or down to make the sold property more like the subject property. That is the basic statement of the appraisal process. And here, because these lots, the subject property lots are being appraised in their native natural state with no utilities in most cases, no physical access and so forth, most of the sales will have those; therefore, this adjustment process is rather critical, and it typically will be downward because the subject properties do not have most of the features of the properties that are in the market, unless you use larger acreage parcels where they may not have any utilities either.

Chairman CRAIG. Any addition to that, Joe, that you would like to add?

Mr. CORLETT. I tend to agree with that. That is a standard way of appraising. My analysis was deductive, where I started with a value as if they were in fee simple title, with all the amenities and the infrastructures in place, and then I deducted for those factors that they (permittees) provided, including the incentive. So I came up with a raw dirt, raw land type of value, and that is what that 83,000 to 212,000 represents.

Chairman CRAIG. Can either of you express to me the provision in the bill that deals with entrepreneurial incentives; why should entrepreneurial incentives be part of what appraisers consider?

Mr. BETTS. That is the payment for taking on the risk.

Chairman CRAIG. You can establish a value to that?

Mr. BETTS. Yes. It is not the most concrete piece of evidence that appraisers have to develop in the appraisal process. I think any appraiser would tell you that it is one of the tougher numbers to come up with, but we have to do it all the time in other appraisals, any subdivision, proposed subdivision proposal has that same problem. So we are simply saying that to be consistent with appraisal theory, that entrepreneurial incentive must be deducted because it belongs to the person who performed the work, which in the case that we are talking about in the bill, are the permittee.

Chairman CRAIG. That is not blue sky?

Mr. BETTS. No, it is not blue sky. It certainly is not the appraiser's favorite number to come up with, and it is one we get criticized for whenever we do, but it is part of the regular appraisal process.

Chairman CRAIG. OK, all right. Thank you.

Mr. CORLETT. Mr. Chairman, I can maybe add a little example to that, and that is the case of the developer that buys a piece of natural native land for \$10,000 a unit. He then develops that land at a cost of \$10,000 per unit, putting the infrastructure in. And would he then sell the property to purchasers for \$20,000 a unit? And emphatically, the answer is no, unless it is really a bad market. So the incentive is what the market will pay for that property, and if it is \$30,000, he has had a \$10,000 incentive.

Chairman CRAIG. The entrepreneurial incentive, that is spread then; is that right?

Mr. CORLETT. Yes, Sir, that is correct.

Chairman CRAIG. Thank you. David, you gave us the experience that you have had with a second appraisal, and the willingness of the Forest Service to take that. We have heard the Forest Service

talk about second appraisals and the frustration that they may not have been conducted as the first appraisal was conducted. And yet, I have a sense here that there is a dispute over definitions. There is a dispute over what has value and what does not have value, and for the Forest Service to suggest that they might not be able to take a second appraisal because it was not conducted exactly like the first appraisal, appears to me to be an inevitable conflict that results, unless you have the first appraiser instruct the second appraiser in great detail on how he or she accomplished it. How were you able, in a second appraisal, and therefore to cause an adjustment downward to that, able to do so? Would you give us a little bit of insight into how that happened, and also explain, if you would, the kind of assets that private cabin lots have versus these recreational Federal lots, if you will?

Mr. MEAD. Let me answer the second question because it is easier, first. Here again, the bundle of sticks, the property right things, is not being taken into consideration by the Forest Service. In our second appraisal, our appraiser took those more into—deducted the fact that the rights on National Forest cabins are totally different than rights on private lands. Yes, the private lands have zoning and planning and police powers, and other powers on them. Yes, they have restrictions in the SNRA, because the SNRA has certain restrictions. But here again, they have many more rights than we do.

And this is one of the problems with the instructions that have come out of Washington to the appraisers. The Forest Service appraiser looks at it one way. He reads the standards and he comes up with one set, "OK, this is how I need to do it." The second appraiser comes along. He is not hired by the Forest Service. He interprets it different. He has a conference with the Forest Service, yes, before he is accepted by the Forest Service, because each second appraiser, or for that matter, first appraiser, must be okayed by the Forest Service. But when you get right down to it, the second appraiser, or I know the Forest Service appraiser, would say, "Well, gee, there is a difference between this private lot. This other guy has so few rights on the Forest Service, and so I will deduct a greater amount on the Forest Service lot than I will on the private lots." The Forest Service does not want the appraiser to give credit for any rights that the National Forest cabin owner does not have versus what the private has. And that is one of our biggest conflicts with the Forest Service, that they do not deduct what the rights are.

And may I refer to Mr. Betts on that, because he is the expert on that?

Chairman CRAIG. Mr. Betts?

Mr. BETTS. I think I was pouring water, Mr. Chairman. I am not quite sure that—

Ms. VERHOEF. How does the second appraisal come up with something new?

Mr. BETTS. I think it is a matter of trying to understand the somewhat vague, somewhat contradictory statements that I have seen from Forest Service. It is a matter perhaps of the face-to-face instructions from Forest Service staff to the appraiser, and it may be simply in the reality that different people in the Forest Service,

reviewing one of these appraisals, may take a different take on it one time, and another reviewer in the Forest Service may take a slightly different take on it.

Chairman CRAIG. Yes, Mr. Allman.

Mr. ALLMAN. Mr. Chairman, I would like to point out that every financial asset reflects the amount of risk involved, and the amount of risk in these permits where there are, contrary to what Mr. Karstaedt said, roughly at least a hundred a year that are no longer there, there is an element of risk. Everyone who is in these that is not innocent has recognized this risk, and that is really reflected in the value which is not being taken into account, the fact that they are not compensable, that there is a greater risk, you cannot borrow against them; these are different critters than a fee simple.

Mr. MEAD. Mr. Chairman, many buyers of cabins have not read their permits or their perspective permits. Most buyers are innocent. That is their fault. I am not blaming the Forest Service for that.

Chairman CRAIG. Yes, you could not for that. That is correct.

Mr. MEAD. Many cabins are even bought as we sit here, and you ask the buyer have you read what your restrictions are, and if they are very wealthy, they say we do not care, or if they are blue collar or retired, no, they have not. They are taking faith that everything is all right. Then, all of a sudden, bing, they wish they had read it. It is like not reading a title report on your private land.

Chairman CRAIG. In the instance of your second appraisal, what was the average difference?

Mr. MEAD. The first appraisal was \$50,000.

By the way, our Valley View has one typical. There are 34 cabins there, but there is only one typical. Pettit Lake has, I think, three typicals. So, in our case, all the cabins came up with the same. There would not be any average, but we went from 50,000 to 35,000. Anyway, our fee came down from a proposed 2,500 to 1,750. That is a nice 30-percent reduction, yes, but still for many of our cabin holders up there, they are not going to be able to afford it.

Chairman CRAIG. That was up from—what was the fee paid prior to the new fee levied?

Mr. MEAD. Oh, yes. We started with \$390, which was too low and unfair. We realized it is not fair to ourselves as Government. The 2,500, we think is unfair.

Several cabin owners in the Valley View tract sold immediately when the appraisal came out. They said, "I cannot afford this. I might as well sell," and they sold. When the second appraisal came out, even though it was lower, 2,500 to 1,750, some more have gone on the market and several have sold. They said, "We cannot even afford that."

Some of those, as I say, were naive. They did not realize what the risk was of owning one of those cabins.

Ms. VERHOEF. Mr. Chairman?

Chairman CRAIG. Yes.

Ms. VERHOEF. The coalition also looked at the first and second appraisals in several locations. Part of the reason the second appraiser's results will be different is the nature of appraising itself.

It is kind of an art, not a science, notwithstanding what these gentlemen at the end of the table feel.

They are nodding, I will note for the record.

It also has somewhat to do with those instructions from the Forest Service. They are the same, but they are inadequate. So they are interpreted differently.

In Mr. Mead's case, the second appraiser took some of the same market transactions, but made different deductions, made additional deduction adjustments to make them equivalent to the native land underlying the cabin that the first appraiser did not take.

Luckily, the Forest Service agreed to those being appropriate. None, however, were instructed. There is no provision for that.

The first appraisal was accepted by the Forest Service, "Oh. Well, gee, you did not make those adjustments. Gosh." They just sort of were willing to accept the higher value.

Chairman CRAIG. I appreciate your expression about art or the art of the science or the art of the knowledge, having once been a real estate knowledge, having bought and sold ranches and private properties and other values. I appreciate what you are saying. I mean, there is a norm, a standard. When comparables are available, it is a little more consistent. When they are not and we are dealing with the uniqueness of this rather hybrid animal, I can appreciate both what Mr. Corlett and Mr. Betts are saying, which gets me back and probably to my final question.

Either, Joe, you can respond to this or, Mr. Betts, you can respond to it. I find it very interesting, and I am frustrated by this. Public land, per se, is not for sale. There are exchanges and values are established for those exchanged purposes, and those values are oftentimes based on private values or the value of the asset once it goes private as a comparable to when it was public.

But in the context of a public property that is anticipated not to sell or at least the base land not to sell—and we understand here the cabin itself can sell, but in those instances, other than exchanges as the Forest Service has expressed, in most instances these properties, at least the land, does not sell.

For both of you, what is your definition? We have heard it from the Forest Service. What is your definition of "natural" or "native land"? Because that seems to be a primary instruction that is very confusing to most, or misleading.

Mr. CORLETT. Mr. Chairman, thank you.

The "natural native" is underlined in the Forest Service handbook specifications. In my mind, natural native land is untouched real estate, untouched by man. It does not have access necessarily. It is not ready to develop a cabin on at this time.

Chairman CRAIG. Out West, we might call that—

Mr. CORLETT. Raw dirt.

Chairman CRAIG.—raw dirt, grazing land, something that was—if you are in the ranching business, something undeveloped.

Mr. CORLETT. That is correct.

Chairman CRAIG. OK. Mr. Betts.

Mr. BETTS. Mr. Corlett in a conversation this morning, I believe, referred to the origins of the first cabin that was built at—I think that was Pettit Lake, where the ranger rode over on horseback some 5-miles and met the proposed cabin permittee, and they

looked at the meadow and he said, "Well, why don't you put the cabin there?" So natural raw land at one extreme is indeed a part of, an undistinguishable part of a meadow or hillside, whatever the topography may be.

There are cases where the Forest Service had improvements that were in place prior to the establishment of that tract. Those might have been roads. They might have been electric utility——

Chairman CRAIG. Roads to the tract or roads adjacent to the tract?

Mr. BETTS. Roads adjacent——

Chairman CRAIG. That were not designed for access to the tract originally in most instances is my understanding.

Mr. BETTS. Correct.

Chairman CRAIG. A logging road.

Mr. BETTS. A logging road.

Chairman CRAIG. A road to a campground.

Mr. BETTS. Correct, but in a number of cases, there was no physical access other than cross-country, and I recognize that there are cabin sites today where you have to pack in, where you walk in. There is no vehicular access, but in some of them, the tract owners, cabin owners, have developed a physical means of access for vehicles, and the same thing is true of the utilities.

So one of the big definitional problems in my opinion is defining who is responsible for particular site improvements at a particular tract.

The Forest Service in its instructions has basically said that which the cabin owner or tract owners provided, paid for obviously gets excluded. Everything else gets included.

Unfortunately, that is a poor wording because there might be special assessment districts. There might be a number of other mechanisms where the cabin owners paid for it, and under the current policy, the appraisal service is picking up the value increment, which is unfair.

There is also a problem, as I have indicated in my written report, with the fact that these tracts date back to 1915, in that era. A lot of these improvements were made sometime ago. Who paid for them is, as far as the cabin owners, lost in a historical fog. There is some ability in some cases to reach back to people from that time period who can attest to what happened, but that is not necessarily true in every tract.

Nor did the Forest Service ever at any point in the permit process require property owners to document and maintain documentation of what they did as opposed to what the Forest Service did. It is only now with this appraisal cycle that the Forest Service is basically saying, "If you can improve, you put these improvements in here. Then we will give you a credit for it. Otherwise, we will not."

One of the concerns that I developed is exactly on that point. It is not an easy issue to handle because, as you go into the minutia of this particular issue, it gets more and more difficult to address. Nevertheless, the present policy is clearly biased in favor of the Forest Service or revenue generation and against being equitable with the cabin owners given what you have required for them in the past. So that is part of the problem of defining "native natural."



Chairman CRAIG. Well, that is a fairly good statement to end this hearing on, but before we do that, Mr. Allman, you have an enormous pile in front of you.

Mr. ALLMAN. This is a few of the over 3,600 questionnaires we have returned that are addressed to the individual State Senators, and we will be delivering them to the appropriate offices, but I wanted the record to show that we expect to have well over 4,000 comments on this bill by the end of next week.

Chairman CRAIG. Excellent.

Does anyone else wish to make a comment before I conclude this hearing?

Yes. I usually do not take comments from the audience, but I will. Please stand and state your name for the record.

Mr. STONE. My name is Larry Stone, and I am from the Pettit Lake Cabin Owners Association.

During this whole conversation, one of the things that I have been thinking about was we have not really brought up recently the different instruction that if we took our second appraisal on, that they would be dead because we were instructed not to do certain things, not to go over the sentence of Chapter 6. We were told by Chief Appraiser Tittman not to do certain things. So it seems like this needs to be brought up for the record.

Chairman CRAIG. If you could supply that to me, the kinds of things that you were asked not to do or do——

Mr. STONE. It is in his file, and this whole conversation does not even mention it.

Chairman CRAIG. All right. Mr. Corlett, you seem to be reacting to that.

Mr. CORLETT. Yes, Sir, Mr. Chairman.

The memorandum that came out from Chief Appraiser Tittman said that I could not use a subdivision approach, and that is clearly in opposition to the guidelines which say I have to conform to—you ask for the standards set forth for Federal land acquisitions. It also said I could use sales of leaseholds to determine a fee value, and that does not work, not at Pettit Lake.

Pettit Lake is the big spike in the——

Chairman CRAIG. That is correct.

Mr. CORLETT.—system, and then I get the conflicting statements in the memorandum which is attached to my testimony. You will notice the reference to Marshal & Swift and the county assessor and use this type of stuff, and then in the initial reviews set out of San Bernardino, California, the review appraiser says you really should not use Marshal & Swift and you should get on-site costs and I use Marshal & Swift frequently, as do many appraisers.

So we get this kind of conflict in what is being appraised, and it has never been an issue before as far as the entrepreneurial incentive because nothing has ever been really highly valued. These are high-value properties. They are very valuable, but the incentive on an \$18,000 lot is a lot less than a 400 or \$500,000 lot. So this probably has never really surfaced as it has this year, but the language is in the instructions and they are interpreted totally differently.

If you look at the instructions, I think you would say raw land. I do not think there is many——

Chairman CRAIG. I appreciate that being brought up, and all of that is included in your written testimony——

Mr. CORLETT. Yes, Sir, it is.

Chairman CRAIG.—and attachments. OK.

Well, again, thank you all very much for your time and the record you have provided the Committee as we proceed in dealing with this legislation.

Thank you all very much, and the Subcommittee will stand adjourned.

[Whereupon, at 4:53 p.m., the Subcommittee was adjourned.]

○

---

---

## **A P P E N D I X**

MARCH 22, 2000

---

---

STATEMENT OF SENATOR MAX BAUCUS  
Senate Committee on Agriculture  
Subcommittee on Forestry, Conservation and Rural Revitalization  
Hearing on S. 1938 - Cabin Site User Fees

March 22, 2000

Mr. Chairman, I want to thank you for holding this hearing today on such an important issue. As you know, Montana has thousands of cabin sites on federal lands and as such, any legislation concerning cabin user fee management is of great interest to people in our state.

In Montana, cabin owners have been facing strikingly steep fee increases in the past several years. Appraisal values for these cabin sites have been going through the roof.

This astounding increment has forced several cabin owners to consider selling property that has been in their family for generations.

The cause of this problem is fairly straight-forward. Montana is a beautiful place to live, and people are moving here in droves. As land is purchased, the market drives up land values everywhere.

And because the Forest Service ties its rental rates to reasonable comparable appraisals in some cases, rental rates for cabin sites have increased over 500%!

If we do not address this problem appropriately, families who have enjoyed these cabins for generations may see them lost forever.

Many of the cabin sites in Montana are third or fourth generation property. Grandparents have built these cabins, parents have grown up in them, and children now raise their own children where their families have been for generations.

Fishing and hunting are part of Montana's traditional lifestyle. For decades, these cabins have been treasured recreational retreats as well as essential links to the landscape.

They are home to Fourth of July celebrations, labor Day vacations, and places where people go just to enjoy the Montana they love. Sadly, this may not be the case for long if the present appraisal rates continue to skyrocket.

Already, several families have been forced to sell their property and many more feel

they will soon have to follow their neighbors. Often, this would be a detriment to the Forest Service as well as to the cabin owner.

Families who have exercised responsible stewardship and demonstrated a knowledge of how to care for the land they have lived on for generations will pass ownership over to individuals who are not native to the area and may not have a sense of Montana's unique needs. This is bad on all accounts.

And while the cause of the problem is fairly straightforward, the solution is somewhat more difficult. The United States rents roughly 15,000 cabin sites across the nation. And other federal agencies, such as the Bureau of Land Management, lease cabins of their own.

As we look for a common sense solution to this problem, we need to make sure that it is fair to the cabin owners, fair to the tax payers, and adaptable to cabin sites across the nation.

I want to thank the Chairman of this Subcommittee, Senator Craig, for making a good faith effort to resolve these issues with S. 1938. I look forward to reviewing the testimony of today's witnesses and to hearing the Administration's views.

The West is a special place with landscape that define its people. We must work to ensure that in all western states, families who have enjoyed these cabins for generations will be able to pass them down to their children and grandchildren.

**TESTIMONY**  
**PAUL BROUHA, ASSOCIATE DEPUTY CHIEF**  
**NATIONAL FOREST SYSTEM**  
**FOREST SERVICE**  
**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SUBCOMMITTEE ON FORESTRY,**  
**CONSERVATION AND RURAL REVITALIZATION**  
**COMMITTEE ON AGRICULTURE**  
**UNITED STATES SENATE**

Concerning  
S. 1938, the "Cabin User Fee Fairness Act of 1999"  
March 22, 2000

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to discuss S. 1938, the "Cabin User Fee Fairness Act of 1999". I am accompanied by Randy Karstaedt, Forest Service Special Uses Program Manager, and Paul Tittman, Forest Service Chief Appraiser.

Enactment of S. 1938 would replace the recreation residence fee policy for National Forest System lands and direct the Secretary of Agriculture to establish a set of guidelines for arriving at an annual fee for the privilege to use and occupy a National Forest recreation residence lot. S. 1938 identifies specific, technical provisions to be included in those guidelines. The stipulated practices would be different from the appraisal standards that all federal agencies are required to use in assessing fair market value.

The Administration strongly opposes S. 1938. I will address three of our most significant concerns in my testimony. First, let me give some background.

The Forest Service has encouraged people to use the national forests since 1908. We encouraged them to recreate, watch for fires, render emergency aid, and report damages or abuse of forest resources. We established cabin tracts and issued special use term permits for cabin owners. Owners were charged an annual rent representing the market value of the land at that time. This permit allowed the holder to build a structure for recreational purposes, not to be used as a permanent full-time residence. The permit fee is only for the site, it is not related to the value of the structure. The Forest Service grants this privilege only to approximately 15,200 cabin owners nationwide.

In the 1980's, the Forest Service worked closely with the public and permit holders, including the National Forest Homeowners in revising our recreation residence policy, including the manner in which we determine and assess fair market rental fee. In 1987, the Forest Service published for public review and comment proposed revisions to its appraisal and fee determination procedures and policies for recreation residence uses. Nearly 3,200 respondents commented on the proposed regulations, 96 percent of whom were permit holders or associations of holders. Eighty-five percent of those who commented responded favorably to our proposed appraisal procedures. The regulations were subsequently published and adopted in 1988.

The terms and conditions of every recreation residence special use permit direct that recreation residence lots be appraised at least every 20 years. In 1996, we started a 5-year effort to appraise the fee simple value of all 15,200 of our recreation residence lots. We will complete appraisals for all of those lots within the next 2 years. We are using the same appraisal specifications and procedures today that were set in 1988.

For the record, I would like to include several charts displaying the changes nationally, as well as in several states, in annual rental fees resulting from appraisals that have been completed to date. The national information is the result of completed appraisals that affect approximately 9,600 recreation residence lots, or about 63% of the total. More than 58% of our holders will be experiencing either a decrease in their annual rental fee, or relatively moderate increases. Less than 3% will experience dramatic fee increases of more than 5 times the current fee being paid. The remainder will see less dramatic but still significant increases that, on average, will result in an approximate tripling of their current annual rental fee. Note that the changes in fee amounts shown in the charts are cumulative averages.

We realize that a sudden rise in user fees can be a hardship for some summer residence owners. Therefore, once the appraisal is completed, in accord with Sec. 343 of P.L. 105-83, we phase in fee increases that exceed 100 percent over a three-year period. Also, in accord with Sec. 342 of the Department of Interior and Related Agencies Appropriations Act, 2000, increases in recreation residence fees will be implemented in FY 2000 only to the extent they do not exceed FY 1999 fees by \$2000. In addition, no fee can be



increased any sooner than one year from the time the Forest Service has notified the holder of the results of the appraisal. It is also our policy to allow the permit holder to get a second appraisal if they disagree with the results of the first appraisal. If necessary, our policy allows for a third appraisal when there is an unresolved disagreement in value.

Many of the permit holders who are most concerned with our appraisals occupy lots with high-appraised values, or will experience significant increases in their land use rental fees. At this time, our appraisal procedures are being evaluated by the Appraisal Foundation, the governing body over all appraisal practices carried out by licensed appraisers in the United States. In our conversations with the Foundation staff conducting the evaluation, we have been given no reason to believe that the Foundation will not recognize our appraisal specifications as a professionally accepted means of establishing an estimate of the fee simple value of National Forest recreation residence lots. I would be happy to provide a copy of the Foundation's findings to the Subcommittee when it is available.

Mr. Chairman, I will now briefly discuss our objections to the legislation.

First, S. 1938 would exempt the permit fee for a recreation residence cabin owner from the fair market value provisions in existing law and regulation. The Congress and the Administration have had a longstanding policy that the people of the United States receive not just a "fair" fee, but fair market value for the use of public lands and resources. The current recreation residence fee policy and procedures that the Forest

Service are now implementing were developed to do what Congress has directed us to do: to assess and collect land use rental fees for special uses based on the fair market value of the rights and privileges granted to the holders of our authorizations.

Based on our preliminary analysis of the valuation procedures specified in this legislation, we estimate that the “fair fee” S. 1938 proposes to establish would result in a return to the Treasury of fees that are between \$8 and \$12 million less than fair market value annually. A significant percentage of our recreation residence permit holders would be paying an annual fee that is less than the fee now being paid, fees based on appraisals of land values that are now more than 20 years old.

Second, the “fair fee” that would be established by S. 1938 for recreation residence special uses would be different than a fair market value rental fee. In a market economy, we rely upon the market to determine what is “fair.” Trying to establish a rental fee without regard to market rates for similar properties cannot lead to a fair outcome, but rather only a subsidized result. That is not “fair,” although it is likely very welcome by permit holders.

Moreover, the standard for setting fees would thus be different than the standard by which the Forest Service assesses and collects fees from those who hold permits and easements for the 130 other types of special uses occurring on the National Forests and Grasslands. By exempting recreation residence permit holders from the principle of fair market value rental fees, this bill sets a precedent for other user groups.

If S. 1938 were to become law, it would encourage other users of National Forest System lands to seek comparable statutory authorities that would similarly exempt them from land use rental fees based on the principles of fair market value. The communications, oil and gas pipeline, outfitting/guiding, and commercial filming industries, along with other user organizations, might well seek similar downward adjustments in their own user fees to satisfy their particular economic interests at a time when the Forest Service is criticized for failing to charge sufficient fees for the use of the public land.

Third, S. 1938 would create a 4-5 year period of disruption and inequity in the assessment and collection of fees for recreation residence uses. S. 1938 would require the Secretary to contract with a professional appraisal organization to develop appraisal guidelines that would include the specific, technical provisions provided in section 6(b) of the Bill. We estimate that the procedures needed to develop the guidelines proposed in S. 1938 would take more than a year to complete. Before the Forest Service could adopt those guidelines, they would be subject to public notice and comment, and Congressional review. Promulgating regulations could take several years.

S. 1938 would suspend all current recreation residence appraisal activities pending the promulgation of those new regulations. In addition, S. 1938 would provide all permit holders who have already had their lot or tract appraised by the Forest Service the opportunity to request a new appraisal anytime within a 2-year period following the Secretary's promulgation of new regulations.

In the interim, S. 1938 proposes three options for the Forest Service to assess what are characterized as “transition fees.” The manner in which S. 1938 proposes to assess transition fees would create fee inequities between permit holders occupying comparably valued lots during the 4-5 year transition period.

Since 1996, the Forest Service has spent \$3.5 million of appropriated funds completing recreation residence appraisals. Another \$500,000 is being spent on ongoing appraisals. Most of this \$4 million investment would be lost if S. 1938 were enacted.

In addition, we estimate it would cost the Forest Service \$500,000 to develop the appraisal guidelines and regulations directed in this Bill. After that, we estimate that more than 90% of the 9,600 permit holders who occupy lots affected by appraisals that the Forest Service has already completed would take advantage of the opportunity provided in this Bill and request another appraisal. In satisfying those requests, the agency could spend more than \$3-4 million in another round of appraisals.

The use of National Forest land for private recreation residences is a privilege afforded to a relatively few number of persons. Taxpayers should be adequately compensated for this private use of their public lands.

The appraisals we have completed confirm that the value of the National Forest System land being occupied by recreation residences has increased over the last 20 years. For

some lots, with particularly desirable amenities, that value has increased significantly.

We are implementing our fee policy in a manner consistent with federal laws, agency management direction, and sound management principals concerning fair market rental fees for these uses of the public's land and we believe the appropriate course would be to allow us to continue this process.

Thank you for providing me this opportunity to testify on S. 1938. We would be pleased to answer any questions you may have, particularly on other, more technical, concerns with the legislation.

**Testimony Before the U.S. Senate  
Subcommittee on Forestry, Conservation  
and Rural Revitalization  
of the  
Senate Committee on Agriculture, Nutrition,  
and Forestry  
Washington, DC - March 22, 2000**

**S. 1938, the Cabin User Fee Fairness Act of 1999**

**by  
David R. Mead  
Twin Falls, Idaho  
President, Sawtooth Forest Cabin Owners Association**

**Representing the Association, as well as the Mead  
family--cabin owners at the Valley View tract  
in the Sawtooth National Recreation Area,  
Sawtooth National Forest, Idaho**

Mr. Chairman, I am David Mead, a long time citizen of Twin Falls, Idaho, which as you know is in south central Idaho on the Snake River Plains. The area's base economy is from value added natural resources—farming, ranching and food processing, some timber, and mining. As in most areas of Idaho, the policies and practices of federal land managers substantially determine the economic viability of each community. These same forest supervisors and BLM area managers also make day-to-day decisions that determine whether my family and my neighbors will continue to enjoy affordable opportunities for outdoor recreation on the public's lands.

In my case, I am a National Forest cabin owner lot permittee. A special use permit issued by the Sawtooth National Forest allows me to maintain our family cabin on a half acre lot of the forest's natural, undeveloped land at the southern end of the Sawtooth Valley. This permit also contains many restrictions on our use of the lot, and I have attached a copy to my written testimony. The cabin permit is one, among a few key documents, that must be read to understand the values, both positive and negative, to be taken into consideration in the appraisal process.

I am also the president (volunteer) of the Sawtooth Forest Cabin Owners Association, which represents the 181 families with cabin permits at various tracts located within the Sawtooth National Forest. I am representing both the Sawtooth Forest Cabin Owners Association and my own family today.

I am here to support Senator Craig's legislation, S. 1938, the Cabin User Fee Fairness Act of 1999. The bill will provide relief to nearly 15,000 of families in 25 states and Puerto Rico, who suddenly face alarmingly and excessively high cabin lot fees.

Cabin fees are being recalculated throughout the forest system, based on the results of a routine reappraisal of the lots underlying these cabins. This is a process that normally recurs under current policy every 20 years, but should occur more frequently. However, appraisal methodology utilized by the Forest Service in this round has proven to be inconsistent and unreliable, and cabin owners learned quickly that there is no inclination within the agency to resolve several problems that plague the fee determination process.

It appears that only further guidance from Congress will succeed in sorting out the conflicting objectives the Forest Service faces, as well as unnecessary problems the Forest Service has created. On the one hand, Congress and the General Accounting Office have directed resource agencies to maximize

revenues from federal lands, and in doing so the agency contrived a system that now will capture more than fair market value from cabin owners.

On the other hand, both Congress and the Forest Service made commitments to the American people to provide ample opportunities for appropriate, affordable recreation on federal lands—diverse recreational opportunities for average families and individuals with average or lower income or pensions. The new cabin fees make unaffordable for most families one of the oldest recreation programs—the cabin program—authorized (in 1915) by Congress.

These policy objectives need not be in conflict. Congressman Nethercutt's legislation sorts out the elements of revenue-driven policy objectives and the recreation program policy objectives, allowing the Forest Service to meet both sets of obligations.

I'd like to share with the subcommittee details of our experiences in Idaho that are already well known to Chairman Craig.

I last paid an annual fee based on the earlier appraisal of my lot (20 years ago) in December 1996. The fee was \$390, and that was actually too low, despite the original base fee having been annually adjusted for inflation over a 20 year period in which the national economy was overall very strong, however much of our regional economy in south central Idaho was actually in decline. This failure to keep pace with the national economy tells us something about an important feature of the Forest Service policy that guides cabin fee administration: the index that currently measures and adjusts for annual inflation (or deflation) is fundamentally flawed and must be replaced, as is required by Senator Craig's bill.

The lots in our cabin tracts in the Sawtooth were among the first (in 1996) to be appraised by the Forest Service in the current round of reappraisals. The 34 families at the Valley View tract, where my cabin is located, were stunned by the results—a 541% increase in each of our cabin lot fees, from \$390 annually to \$2,500. Each family had to consider carefully whether the limited seasonal use of the cabin justified this extraordinary hit on the family budget. For most families, it was readily apparent that such an increase was simply unaffordable, and the cabin would have to be sold to people with much greater discretionary income.

The Forest Service policy allows the cabin owner to obtain and pay for a second appraisal by an outside appraiser of the cabin owner's choosing. The cabin owners at Valley View chose to hire an appraiser for this purpose, because it was evident from reading the first appraisal report that the "typical lot" chosen at Valley View for appraisal was treated as if it were a fully developed lot within a legally subdivided neighborhood of fee simple second homes. I can offer that observation with a considerable degree of confidence. I am a retired country banker, and I've dealt with appraisal data from both urban and rural transactions



throughout my career. I'm also an accredited rural appraiser of the American Society of Farm Managers and Rural Appraisers (retired).

The appraiser we hired at the Valley View tract was required by the Forest Service to use the same appraisal guidelines that had been provided to agency appraisers for their initial appraisals. This set of appraisal guidelines is flawed and inappropriately changes the rules of the road with respect to determining proper value for land in an undeveloped "natural, native state" as expressed within and required by the agency's own policy. Nonetheless, our appraiser worked within those guidelines, but determined the value of the "typical lot" at our tract to be dramatically lower than the Forest Service's appraisal results.

For those of you who have not visited cabins in the program, it might help put what you're hearing from me in better perspective if I pause to describe the log cabin my family built in 1975. Our general location is reached by a dirt road built by the Forest Service. As is typical of all cabin tracts, my family then cleared the dirt lane that runs up a steepish hill to within about 150 feet of the cabin's door. The terrain becomes very steep at that point, and we haul goods and gear up this final slope on foot.

There is no electricity. We use kerosene lanterns. We have no phone. My wife and I, and the kids and the grandkids, carry water to the cabin in a bucket from a small stream over the hill. We rigorously maintain an outhouse, consistently meeting appropriate health and environmental standards. Food is refrigerated in an "Ice Box", meaning a primitive example of the very earliest technology. Had we elected to provide ourselves with more amenities, as a good number of cabin owners in some other forests have elected to do, my family and myself would be responsible for these additional costs and risks and, presumably, benefits--not the Forest Service.

The fee that resulted from our second appraisal was \$1,750, an increase of approximately 350%. The increase resulting from this second appraisal came far closer to my own expectations, but also keep in mind that the independent Idaho-based appraiser hired by our tract was required to do his data gathering and analysis, using the same set of appraisal instructions the Forest Service had given its own initial in-house appraiser.

The new fee resulting from the second appraisal is much lower, but nonetheless unaffordable to a number of our families at Valley View, and only marginally affordable to many others. They are facing tough decisions. Some of our cabin owners have already bailed out, and the buyers of these cabins are wealthy. As we feared and predicted, the "cash cow" appraisal objectives that appear to drive the Forest Service are now driving retired people and average income families out of the forests.

Put aside for the moment your personal opinion about whether \$1,750 is too little or too much for the government to be receiving annually as fair market value for use of a quarter or half-acre parcel of undeveloped raw land. The real issue here is the wide variance between two appraisals, each undertaken with the same set of instructions. In the first instance, a Forest Service appraiser examined the comparable sales, and in the second instance these sales were examined by a local, Idaho-based appraiser experienced in rural land transactions within the market area that affects the value of the lots underlying our cabins. An unquestionable piece of evidence validates this variance as a fundamental flaw in the system: the Forest Service accepted the results of our second appraisal without taking exception to any element of the second appraisal report.

The subcommittee needs to also know about appraisal results elsewhere in the Sawtooth National Recreation Area, some two-plus miles away from our Valley View tract as the crow flies. And here, at the Pettit Lake tract, we can also compare new cabin fees at Pettit Lake to new Forest Service campground fees that will kick in this year.

Cabin owners at Pettit Lake enjoy a significant natural amenity not present at our tract—a small lake that is one of a string of moraine lakes running through the region. A few cabins have lake frontage; others have a lake view, although at many of the individual lots this view is obstructed by trees. Otherwise, many cabins at the Pettit Lake tract are very old, and some resemble my own cabin with respect to primitive conditions.

Also present at the Pettit Lake tract is the “poster child” cabin for purposes of quite an array of media coverage about the cabin fee issue. This is the structure and outbuildings built in recent years by a well-known public personality. Objections to various violations of the Forest Service’s cabin policy were overcome by high level political intervention, and the lot now supports an outsized main dwelling and additional structures that have housed security and domestic staff from time to time. While this owner’s cabin and outbuildings cannot be considered to be “typical,” it is the lot that was to have been appraised in a “natural, native state.” The result is a new annual fee that exceeds \$30,000, and fees nearly as high are also be charged to people I consider to be “typical families.”

Families at the Pettit Lake tract are the worst hit, to date, by flaws in the appraisal methodology utilized by the Forest Service. The forest lots appraised at Pettit Lake are within the influence of the Sawtooth NRA real estate market. Here, large acreages of fee simple land have been acquired by the federal government and a multitude of easements have been bought for conservation purposes. Federal acquisition has made the availability of truly comparable market evidence from sales of parcels of undeveloped, raw land as scarce as hen’s teeth.

Further, this market is deeply influenced by the proximity of recreational real estate development at Sun Valley—an influence on real estate values at Pettit Lake, but for these forest cabin owners, Sun Valley is not an actual amenity related to, or adding value to, their day-to-day activities, interests or enjoyment of their cabin.

The results of the reappraisals at Pettit Lake were astonishing. The annual fee for the majority of cabin owners jumped from \$1,114 to \$22,500—an increase of 1,900%. At the high end of the range of values determined by the Forest Service appraiser, the annual fee for occupancy of a “natural, native state” lot is \$67,500.

Cabin owners at the Pettit Lake tract elected without a minute’s hesitation to seek a second appraisal. The results from the second appraisal have been in the hands of the Forest Service for over a year, and the agency is obviously treating the appraisal report with “kid gloves”—if I might use such a term to underscore that the 23 families involved have yet to receive a response from the agency.

There’s an interesting comparison of Forest Service special use fees at Pettit Lake that the subcommittee needs to consider. It’s a small lake, shared by a variety of visitors doing a variety of things. The Forest Service provides a campground for visitors, not too far away from the cabin tract. Some visitors elect instead to camp within the cabin tract on the “yards” of the cabins, which these forest visitors have every right to do. Only the “footprint” of the cabin structure itself is privately owned, and the public is free to wander at will on any forest land not within the walls of our cabins. Cabin owners generally make an extra effort to let the public know they are welcome to camp or picnic within the “boundaries” of a tract, because we would otherwise invite opposition to the existence of the cabin recreation program.

The Forest Service campground at Pettit Lake provides developed campsites at no charge to the public. In the coming season, however, the Forest Service announced last week that the agency will for the first time begin charging \$6 or \$7 per night for each campsite. The agency will spend “several hundred thousand dollars” (according to press coverage) to add 13 additional individual campsites to the existing inventory of campsites, for which I can’t provide overall capacity statistics.

Let’s do the math based on charging \$6 per night per campsite, calculated over the four and one half months in which cabins at the Pettit Lake tract are accessible by their owners:

- A hypothetical long term camper would pay \$810 in fees to the Forest Service during this period for the privilege of continuously occupying a small parcel developed by the Forest Service at considerable taxpayer expense, and in

these months the Forest Service will provide an individual cooking pit at each campsite, restroom facilities, trash disposal, hazard abatement, and other maintenance and amenities.

- The majority of Pettit Lake cabin owners will pay \$22,500 in fees to the Forest Service for this same period for the privilege of occupying bare land at their own expense with full responsibility to comply with highly restrictive terms and conditions contained in the policy and the special use permit. The cabin owner has the obligation to fully indemnify the federal government in any liability exposure the Forest Service might experience from our occupancy. The Forest Service has the ability to block the cabin owner from renewing the permit, from selling the cabin, or from replacing the cabin in the event of a natural disaster. Along with that thin "bundle of rights," the cabin owner is solely responsible for the family's "cooking pit," sanitary facilities, water supply, fuel, access, maintenance and liability.

Cabin owners made the investment in infrastructure and amenities—certainly more cost effectively than the "several hundred thousand dollars" being spent by the Forest Service at Pettit Lake to make space for 13 more families each night. We'll continue to pay our own way. We always have.

The announcement last week by the Forest Service about the new fee for camping at Pettit Lake perfectly illustrates the inconsistency in policy that affects forest users. This complex system of inequities between forest users, their diverse activities, and whether they pay big fees, or small fees, or no fees could not be more apparent than as managed within the Sawtooth National Forest.

The cabin fee coalition, in which I've been participating regularly, developed a chart outlining the real differences between owning a cabin on private land and having one on a National Forest. Time is too short to read these differences to you now, but they are contained in my written testimony and are on the easel in the hearing room.

These are the significant differences that the coalition calls the "bundle of sticks":

**Rights on Private Land:**

1. Can prevent trespass
2. Live in cabin year round
3. Sell cabin with no restrictions
4. Lease the cabin
5. Give the cabin away
6. Put cabin in a family trust
7. Subdivide the land
8. Will/bequeath cabin and land

**Rights on a National Forest:**

1. Control only cabin footprint (cabin interior only; public can use lot)
2. Vacation cabin only
3. Sell only to a USFS approved buyer
4. Rent up to 15 days annually, but only with USFS approval
5. Put cabin in a family trust

**Rights on Private Land:**  
***(continued)***

**Rights on a National Forest:**

9. Have multiple owners on the title
10. Borrow against it
11. Run a business from it
12. Use it whenever you choose
13. Control who walks on or near it
14. Add buildings
15. Install a swimming pool/hot tub/sauna
16. Landscape any way you choose
17. Cut down old/plant new trees
18. Paint whatever color you choose
19. Remodel/enlarge the cabin
20. Put up signs, fences & clothes lines
21. Maintain it as you see fit
22. Remove hazards as you see fit
23. Have horses or cattle around your cabin
24. Allow your pets to run loose
25. Have any number of cars in your driveway
26. Services of local fire department
27. Services of local police department
28. Services of local sanitation department
29. Services of local water & power utilities
30. Have mail/newspaper boxes
31. Have children's play equipment
32. Plow snow from road, driveway and lot
33. Have Rvs, trailers or boats on your lot

As a retired country banker, I will leave you with one fundamental, professional observation. Assuming credit worthiness, I would approve a mortgage to the owner or prospective buyer of a fee simple "native, natural" parcel. Assuming vast riches, no banker would ever grant a mortgage for the "asset" that is a cabin authorized for occupancy and use on a National Forest under the cabin program.

Nor have cabin owners ever sought this level of "property right." It is a privilege for my wife and me to enjoy our retirement in the forest each summer, for however long we are able to drag food, water and goods up that last 150 feet between the lane and our front door. It has been far more than a mere privilege to raise our children in harmony with the Sawtooth Valley—it was a remarkable opportunity to expand their lives beyond day-to-day urban life in Twin Falls. Today, all but one of our six children have settled in major western cities. They return with the grandchildren like homing pigeons to the family cabin in the Sawtooths. Their values, and the experiences of so many of their friends that they bring along to stay at the cabin, are permanently measured against the

"native, natural state" experience in the Sawtooth National Forest that creates personal integrity and lasting memories.

Can a Forest Service appraiser factor in human values of this magnitude? No, nor should they. But the Congress certainly needs to take into account the social and physiological value of the cabin program. The objective is the forest experience, creating in each generation a constituency for good stewardship on the National Forest System. A return of fair market value for the privilege and opportunity to be a forest citizen is embodied in the law, and S. 1938 also fulfills that objective.

Mr. Chairman, you were among the first to hold a field hearing on this issue when the first results in this current reappraisal of the cabin system demonstrated, at the Sawtooth National Forest, that something was wrong. I am grateful for how promptly you moved. Cabin owners in both northern and southern Idaho know that you, Representative Chenoweth-Hage, and Representative Nethercutt created the space and the opportunity for cabin owners to sort through appraisal and fee methodology issues that the Forest Service is not inclined to "cure."

I've regretted that it has taken all of us so long to identify, and reach consensus, on a reliable solution in S. 1938, but I'm comfortable today in realizing that good, long term policy evolves slowly. The problems we confront as cabin owners are absolutely unique, and these conflicting values and bundle of rights are virtually unprecedented in normal appraisal activities. The solution drawn from this effort by Senator Craig in S. 1938, and by Representative Nethercutt his companion bill, H.R. 3327, is good policy and is sufficiently specific in its direction to the Forest Service that it will hold up over time.

I'd like to close by expressing the gratitude of cabin owners in Idaho to you and your subcommittee colleagues. The enactment of S. 1938 will become one of those landmark "household words" that passes from one generation of cabin owners to their children and grandchildren. The reappraisal situation has been a wake-up call for cabin owners who trusted that their good relationship with the local ranger was all that was needed to keep this Forest Service recreation program working effectively. Not necessarily so. The world has changed. The pressures are different now, for both the cabin owners and the hard-pressed field staff of the Forest Service.

All cabin owners will learn in time that Senator Craig is one who continues to step forward to maintain fairness and good balance in the determination of cabin fees and in the administration of the program overall.

Mr. Chairman, I'm proud to have you as my senator. Let me say once again how much I appreciate the opportunity to testify, and I continue to appreciate your leadership in our behalf.

Written Testimony of  
**NATIONAL FOREST HOMEOWNERS**

by Mary Clarke Ver Hoef  
Chair  
National Forest Homeowners  
Government Liaison Committee

before the U.S. Senate  
Subcommittee on Forestry, Conservation and Rural Revitalization  
of the  
Committee on Agriculture, Nutrition, and Forestry  
March 22, 2000

Mary Clarke Ver Hoef  
1545 River Park Dr. Suite 550  
Sacramento CA 95815-1265  
(916) 925-1800  
fax (916) 925-1265  
mary\_verhoef@mhksacto.com

Additional Information:  
Bob Ervin, Executive Dir.  
18140 SE Stonewood Dr.  
Gladstone OR 97027-1164  
(800) 669-9971

Written Testimony of  
**NATIONAL FOREST HOMEOWNERS**

by Mary Clarke Ver Hoef  
Chair  
National Forest Homeowners  
Government Liaison Committee

**TABLE OF CONTENTS**

1.	Introduction	1.
2.	What is a Recreation Residence?	1.
3.	Limitation on the Use	2.
4.	Historical Method of Setting the Use Fee	3.
5.	Current Method and Problems with Methodology	4.
6.	The Cabin User Fee Fairness Act of 1999	7.
7.	Conclusion	8.
8.	Table of Exhibits	9.



Written Testimony of  
**NATIONAL FOREST HOMEOWNERS**

by Mary Clarke Ver Hoef  
 Chair  
 National Forest Homeowners  
 Government Liaison Committee

**Introduction**

Mr. Chairman, thank you very much for the opportunity to address you on an issue of great concern to recreation residence permittees. I am a member of the National Forest Homeowners ("NFH") which represents holders of special use permits issued by the USDA Forest Service pursuant to the Term Permit Act of 1915, 16 U.S.C. Section 4971.

The Forest Service recently undertook its procedures for updating the special use fee that we pay every year. The first area to complete the procedure was in the Sawtooth National Forest in Idaho which includes the Sawtooth National Recreation Area. The fees were astronomical, some as high as \$30,000 per year. The procedure, as it continued around the country, resulted in other unreasonable fees. Although none were quite as egregious, they were high enough to wonder just who could or would want to pay such a fee for this use. We all agree that we should pay a fair fee, but many of the resulting fees are not fair.

In an effort to solve this problem, NFH joined together with other representatives of recreation residence users to form a Coalition. This included representatives of National Forest Homeowners, American Land Rights Association, California Forest Homeowners Association, Oregon Forest Homeowners Association, and Sawtooth Forest Cabin Owners Association (Idaho) and included other organizations and individuals whose input was invaluable. We hired Betts & Associates, a consulting appraiser, to help us analyze the problem. We reviewed the process in many areas of the country. The Coalition believes the bill before you today, the Cabin User Fee Fairness Act of 1999, goes a long way to resolving our problem.

**What is a Recreation Residence?**

In order to understand why the current new fees are unreasonable for this use, it is important to understand just what is this asset called a "recreation residence."

The Organic Act of June 4, 1897, (6 U.S.C. Section 475), and the Multiple Use Sustained Yield Act of 1960, (16 U.S.C. Sections 528 et. Seq.), show the direction that

Congress has given the Department of Agriculture and, thus, the Forest Service: to balance the uses of the National Forests "so that they are utilized in the combination that will best meet the needs of the American people." Subsequent legislation has in no way changed these fundamental directives.

When the Term Permit Act, (16 U.S.C. 9701), became effective in 1915, the Forest Service advertised in newspapers throughout the United States, offering sites for "summer homes." Advertising solicited the general public, and the general public responded. The Forest Service issued permits for recreation residence sites to ordinary people, not the rich of our country. This was to be a program to help the Forest Service manage its forests for recreational opportunities and was just another in a broad spectrum of uses of our forests by the public.

The early recreation residences were often hand built from materials found nearby. Access to the sites often took several days and sometimes could only be had by horseback. Today, many of these original cabins still have hand-hewn shakes and logs, and display construction methods that are no longer used. They bring to mind the era of Teddy Roosevelt, early "conservationists," and the formation of the National Forest system. We continue to subscribe to these ideals. Many of these are truly cabins in the woods, not equivalent to a second home at a destination resort area. Many have no electricity, and many provide and maintain their own road access, as well as their own water supply.

There is still a valid and valuable place for the recreation residence in the national forests. This is only a different type of public use of the forest, one that provides the forest experience to many Americans. Cabins provide access to forest recreation not only by the immediate family of the cabin owner, but also by extended family members and friends. In many cases, cabins also provide the very young, the elderly, and people with disabilities an opportunity for forest recreation that may not be readily available to them in a campground.

#### **Limitations on the Use**

Use of cabins on Forest Service permits differs greatly from that of cabins on private lots. Our permits are for no longer than 20 years. Permittees must adhere to strict limits on the use of their cabin. Commercial use is prohibited. We are restricted in the size, shape, color and period of occupancy of our cabins. Region 5 has recently proposed a set of uniform guidelines which include all this. They add such provisions as removal of all but 1400 square feet of cabin size on issuance of a new permit, notwithstanding prior approval of a larger size.

Other members of the public may not be precluded from using the "lot" on which our cabins are placed. The general public is welcome to use every inch of the land on which our cabins sit except for the cabin's "footprint". In order to implement this requirement, our tract of cabins has worked with the Forest Service to create a system of paths that makes it clear to the general public that the cabin's presence does not prevent their use.

We are not guaranteed that we will be allowed to stay on that lot. We must be vigilant to ensure that the local Forest Plan still perceives our use as consistent with the overall use of the forest. When the Forest Service proposes new regulations with respect

to forest plans, we comment on proposals such as the new proposed regulation's mandate to bring the forests back to pre-European conditions. While we must be given 10 years notice of the non-renewal of our permit, upon its expiration we must remove all structures and restore the lot to its original condition. The Recreation Residence Policy promulgated in 1988 and finally revised and published, after an appeal, in the Federal Register at Vol. 59, No. 105, pages 28714-28741, June 2, 1994 (1988 Policy), contains those requirements. A property subject to these restrictions is a very different asset than a vacation home with "fee simple" ownership of the underlying land.

The last new tract offered for recreation residences was offered in the 60's. The number of these cabins has slowly diminished over time. There are currently just less than 15,000 recreation residences left in the system. While the Forest Service has recently estimated, in testimony, that the cost to administer recreation residence program is \$3.2 million, the income currently received from fees *before* the current re-assessment is \$9.4 million. This compares very favorably with other uses of the forest, and is the most cost effective program the Forest Service has on federal land.

#### **Historical Method of Setting the Use Fee**

We have no objection to paying fees that we believe are fair, as long as they are related to the type of use we have. The original practice of appraising the land underlying our cabins, as though that land was bare undeveloped land, with a percentage of that value as our yearly fee, should result in reasonable fees, if that process is fairly performed.

As a way to justify the current process, the Forest Service is fond of saying the permittees agreed to this method when the Policy was rewritten in the early 1980's. What the Forest Service is doing now is not what was envisioned then.

Attached as Exhibit A is a copy of a document prepared by three individuals involved in the process in the early 1980's. It shows the current problem is not a new one. The attempt was to make the current method of fee determination market-based. The adjustments were to be made to "fee simple" raw land to result in the fee determination. When comparable raw land is not available, certain other adjustments were to be made. The 1988 Policy is contained in Section 33.3 of the Forest Service Handbook. It calls for the fair market value of the recreation residence lot to be established using professional appraisers. The appraisers are to determine the market value of the lot as if it were owned by the cabin owner (fee simple) "without consideration as to how the authorization (of the use) would or could affect the fee title of the lot." Typical lots are to be chosen in each tract (to avoid the cost of doing separate appraisals for similar lots) and each of these are to be the subject of an appraisal. Comparable market sales are to be used "of sufficient quality and quantity that will result in the least amount of dollar adjustment to make them reflective of the subjects lots' characteristics."

The Policy language then gives specific adjustments that should be made. These include:

- a. Physical differences between the lot and comparable sales;
- b. Legal constraints imposed upon the market by governmental agencies;
- c. Economic considerations evident in the local market;
- d. "Locational" considerations of the lot in relation to the sale comparables;

- e. Functional usability and utility of the lot;
- f. Amenities occurring on the lot as compared with the sales comparables;
- g. Availability of improvements (roads, water systems, power, etc.) provided by entities other than the cabin owner;
- h. "Other market forces and factors identified as having a quantifiable effect upon value."

After a value is set, the annual fee is determined by multiplying this value by five percent.

The "comparables," and the validity of using any chosen market transaction as a "comparable," as in any appraisal, are crucial. The adjustments were expected to result in a fair adjustment to a dissimilar transaction.

#### **Current Method and Problems with Methodology**

The current method for determining a yearly fee, then, is based on the concept that there can be an appraisal of comparable bare, privately-held land. For each "typical" lot or lots in a tract of cabins, the appraiser must identify sales of somewhat comparable privately-held parcels in the same geographic area. Thus, the comparable parcel must be truly comparable. The annual permit fee is then set at 5% of the appraised value for the "comparable" parcel of private land. This annual fee is then multiplied by an index to account for inflation (or deflation), currently the Implicit Price Deflator (IPD), chosen for its tendency to be more stable than other indexes. This re-appraisal process is to occur every 20 years.

In order to implement this policy this time around, the Forest Service prepared a new set of guidelines for appraisers. Our review of those guidelines, and our review of the resulting appraisals, leads us all to believe that these guidelines, as currently written, mislead the appraiser to use market transactions which are fundamentally not comparable. Where there are no comparable sales, market transactions are being used without the proper adjustments to make them reflective of the cabin lot's value. This results in flawed appraisals and, in some places, excessive values.

Further, the fact that this is an unusual asset, and the unusual method by which the appraisers are to produce a "comparable sale" when there are few really comparable assets, has complicated the issue. Finally, various governmental acts, such as the creation of the Sawtooth National Recreation Area in Idaho and the act of buying up the surrounding land, have added an inflationary pressure on neighboring land which makes the use of "comparable sales" less than useful when using this method to set a fair fee for this use.

Several things in the language of the guidelines caused us concern. First, the current guidelines refers to "sites," not "lots." An earlier version of the Policy contained the "site" language, which was changed to "lot" in the final version due to a legal opinion that the term "lot" was preferable. It is clear that the individual who wrote the guidelines was not aware of that change.

In addition, a most troublesome sentence occurred in the guidelines in C-2.1(f) (2). "As a private privilege [sic] use of National Forest System lands, the occupancy cannot interfere with public or semi-public uses having a documented higher priority." Language such as "private privileged use" flows directly out of the language of the Appellants to the

Policy as it was originally drafted. That philosophy was soundly rejected by the amended Policy, with its language at 2347.1 that recreation residences are a valid use of National Forest land. The language "higher" priority does not occur in the final version of the Policy, either, having been replaced with the correct "alternative" public use. The Coalition can only conclude that the draftsman of the guidelines had a personal opinion about the cabin program which differed from what the Policy intended.

Our review of selected actual appraisals, and the analysis of our appraisal expert, confirmed what we suspected. The manner in which the guidelines were drafted is resulting in the use of market transactions which are not comparable. Further, appraisers working under the guidelines provided by the Forest Service consistently fail to make appropriate market adjustments where warranted.

In forests near destination resort areas, and even in tracts whose location is outside the actual "neighborhood" influence of the resort but whose "comparable sales" evidence does not reflect the difference, developed vacation subdivision lots are being used, and the Forest Service's appraisal staff has expressed the opinion that this is entirely appropriate since the cabins are equivalent to any other "vacation home" that someone who has sufficient funds can afford to purchase. Even the poorly drafted guidelines refer to the "natural, native state" in the definition section of C-2.1(f). Raw land is not the same as a developed lot in the marketplace.

In circumstances where an appraiser is unable to find local market transactions of the sale of undeveloped land, land in various stages of recreation development are being used, but the appropriate adjustments required by the Policy are not being made. For example, an adjustment for "remoteness" of the typical cabin lot is rarely included. The required deductions for physical improvements to the site are sometimes made, but they are not always adjusted for the extra cost that the remote nature of the location brings, or for the difficulties that the lot itself imposes for the costs of improvements. Further, appraisers are being directed to make adjustments to give the benefit of the doubt to the Forest Service when considering improvements.

The Forest Service provides the raw land and over the years the cabin owners have capitalized and taken the risk in providing water, sewer, utilities and the cabin structure. These improvements, unless recently added, are rarely documented. We know the Forest Service did not build the cabin, but often only the cabin owner's memory is left to show the access road was originally built by the cabin owners, even though the road is now also used as access to the campgrounds. These are expenditures that should accrue to the cabin owner, not the Forest Service. The remoteness of the site, and its physical limitations (its steepness, the quantity of rocks or quality of the soil) set the amount of money the cabin owner spent on the construction of the roads, sewer and water systems. If the Forest Service cannot prove it provided the improvement, then no adjustment should be made to increase the value of the raw, undeveloped lot.

Also of great concern is that an adjustment is not being made between the market price of raw undeveloped land and the market price of a developed subdivided lot. This is referred to by professional appraisers as the "entrepreneurial incentive" factor, and it is this factor that captures the entrepreneurial nature of the market. A lot in a subdivision sells for more money than does an undeveloped parcel. It is the developer who provides capital for the improvements upon raw land and assumes all risk — such risks as an

undependable water table, boulders that increase the cost of road-building, septic fields that require more sophisticated technology than had been anticipated, or short-term real estate market fluctuations as a project is brought to completion. Developers capture this entrepreneurial incentive by adding a percentage or percentages of "value" to their land as the project progresses. Appraisers see the value of a subdivision as an equation:

raw land value+ development costs + entrepreneurial incentive = developed lot market value.

We know that appraisers have inquired about using this adjustment factor. We know the Forest Service at the Washington, D.C. level has instructed its regional appraisers not to adjust for the cost to develop a subdivision, profit to the developer, risk or infrastructure in the appraisal. This instruction conflicts with the Uniform Standards for Federal Land Acquisition as well as the Policy. It is consistent, however, with the staff's view that these cabins are equivalent to residences in a vacation resort subdivision.

These adjustments are not speculative. They can be readily determined by consulting the developer whose subdivision lot is being used as evidence of a market transaction, and a common range of percentages of the total lot price can be anticipated as an adjustment factor. It is this factor that is not being deducted in the adjustments to market transactions to result in a bare land value. This should be required in the specifications to appraisers. Instead, the language of those specifications leads the appraiser to use subdivided lots as comparables with no adjustment. By failing to allow the required entrepreneurial adjustment, the Forest Service is attempting to capture this factor for itself. This practice results in a fee that is greater --often far greater-- than the fair market value of the use. This is clearly not what the Policy says, nor what was intended by the drafters of that Policy, nor does it result in fair fees.

We believe that the current problem can be mitigated by the revision of the guidelines to appraisers, but, based upon our discussions with Forest Service employees, it is clear the Forest Service will not make those changes. They rely on the belief that they must get "fair market value". They do not recognize the difference between the fair market value of the use and the fair market value of the underlying real property. The Independent Offices Appropriations Act of 1952 (I.O.A.A.) as amended 31 U.S.C. 9701 requires that our fees be

- (1) fair, and
- (2) based on--
  - (A) the costs to the Government
  - (B) the value of the service or thing to the recipient;
  - (C) public policy or interest served; and
  - (D) other relevant facts.

A number of our members worked with the Chief of the Forest Service when the current Policy was developed. We know what was intended. An appraisal method is to be used to "back in" to a fair use fee. We know what the 5% was intended to cover. The current implementation of the policy is not what was intended.

Further, such a method is fraught with the potential for confusion by appraisers. This is an extremely unusual asset, with an unusual appraisal methodology. It took the

Coalition and its expert much time to unravel the reasons fees were being set so high, and we know the nature of the asset and the underlying policy.

It became clear that legislation was the only manner in which to solve this problem, given the Forest Service's approach to this recreation use. The bill before us is an attempt to support the underlying policy of setting fair fees, while providing a valid appraisal methodology to do so. Further, an adjustment is required when that methodology will not result in fair fees for the use, in cases where a government act inflates local land prices though the creation of a scarcity, such as has occurred in the Sawtooth National Recreation Area in Idaho. A different inflation factor is proposed, as well as a slightly different method for resolution of disputes over the appraisal results where they arise.

### **The Cabin User Fee Fairness Act of 1999**

The Bill before us today, which we support, is intended to remedy the errors we see. It recognizes the program of recreation residences for what they are, not as equivalent to vacation homes on subdivided lots in resort locations. It calls for reasonable and fair fees for cabin use.

The Bill also includes specific, detailed requirements for the appraisal, since this is such an unusual appraisal assignment and its current implementation has revealed so many problems. It calls for appraisal every 10 years, instead of 20, to make sure the Forest Service is getting the fair market value of our use, in the event the annual index does not work as expected. It chooses a new index, one more closely tied to local land values, but not one tied to residential use.

In those circumstances where certain governmental acts produce an unfair fee, we require the comparable land analysis to go outside the area influenced by those acts. In those circumstances, the annual index used is a state-wide index instead of a local one.

As is currently provided, the first appraisal is performed by an appraiser of the Forest Service's choosing, and in the event that there is an objection, the second appraisal is at the cabin owner's expense. Here, it is specifically provided that the presiding officer then can choose the results of the first appraisal, the second appraisal, or any value in between the two appraisals. If the resulting fee appears unfair to the cabin owner's tract, in which the typical lot is designated, then the tract can ask for arbitration.

With the use of the proper appraisal instructions, the need for a second appraisal should be reduced. For those cabin owners with completed appraisals, they would have a choice to accept their appraisal under the old method, or request a new appraisal. As not all appraisals report huge increases in value, many completed appraisals will not need to be redone.

Attempts were made to ensure that the language of the bill is understandable to an appraiser in the field, who, after all, is the individual charged with the first attempt to make it work. We did discover errors in appraisals resulting from simple ignorance of appraisal theory. The old method only called for appraisers to be members of a nationally recognized professional organization. Forest Service appraisers only needed adequate training, completion of basic courses, and "competence". The Bill seeks to bridge the gap

between the normal knowledge of a suitable appraiser, and the unusual request that this appraisal involves. The Bill's provisions seek to make clear what is being appraised, and why.

### **Conclusion**

The bill before you today, the Cabin User Fee Fairness Act of 1999, is a much needed revision to what is now a problematic process of setting special use fees for the recreation residence. Our research shows the methodology currently employed results in appraisal errors in theory, with resulting erroneous values. Some of those errors have created unreasonable fees which cannot possibly reflect the fair market value of the use. This bill should correct those errors, giving the appraiser careful instruction for a difficult assignment.

The method of setting use fees based on an appraisal of the underlying lot, if not adjusted where certain governmental acts have cause local land to precipitously rise in value, results in even more unreasonable fees. Directing appraisers to use land outside the area of influence of the governmental acts will result in the selection of truly comparable land, with a resulting fair fee.

Performing the appraisals every 10 years instead of every 20 years will keep the use fees closer to fair market value, as will the use of an index closely tied to local land fluctuations. All this should create a more intellectually honest appraisal method, which is consistent with uniform appraisal theory, and which should bring us all the assurance that the fair market value of the use is being captured.

The high fees resulting from improper application of the underlying policy, if allowed to stand, will change the face of this program, limiting its use to the very rich. This program should stay affordable by the ordinary American. This Bill is essential to that end.





## American Land Rights Association National Inholders Association

<p><b>National Headquarters:</b>          30218 NE 82<sup>nd</sup> Avenue (PO Box 400)          Battle Ground, Washington 98604          Phone: (360) 687-3087    E-Mail: <a href="mailto:alra@pacifier.com">alra@pacifier.com</a>          FAX: (360) 687-2973    <a href="http://www.landrights.org">www.landrights.org</a></p>	<p><b>Legislative Office:</b>          1217 "E" Street, NE          Washington, DC 20002          Phone: (202) 546-2545          FAX: (202) 547-7513</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Written Testimony of  
 THE AMERICAN LAND RIGHTS ASSOCIATION  
 by Paul R. Allman,  
 Director of Cabin Owner Affairs

before the  
 Subcommittee on Forestry, Conservation, and Rural Revitalization  
 of the Senate Committee on Agriculture, Nutrition, and Forestry  
 in consideration of S-1938,  
 The Cabin User Fee Fairness Act of 1999  
 March 22, 2000

We wish to thank the committee for this opportunity to comment on Recreational Residences on the National Forests, the current reappraisal process and the reasons for S. 1938.

(I) *First, we wish to express our conviction that the current appraisal process makes no sense. It is clearly inequitable as well as being blatantly irrational and possibly illegal.*

These cabin lots are *not for sale*, have *never been for sale* and, barring great changes and unforeseen developments, *will never be for sale*. This is not a real estate transaction. This is simply a method of determining a fair "use fee" for a recreational use.

What are we really talking about here? A small site on which a cabin owner can maintain a small summer cabin, under strict guidelines...*at no expense to the government*. What possible sense does it make to have the use fees for the exact same use vary from district to district, from forest to forest, from region to region by over 150 times, 15,000%? This range of "user fees" from under \$200 to \$30,000 makes clear the current Forest Service appraisal process is blatantly flawed...and obviously non-rational.

We have discussed the policy direction and the Forest Service implementation of this process with certified appraisers, professors and teachers of appraisal as well as authors of well known texts on the subject. Their feeling is that the agency appears to be in violation of the Uniform Appraisal Standards for Federal Land Acquisition created by the Interagency Land Acquisition Conference under the leadership of William Kollins, Chief of Land Acquisition, Energy and Natural Resources Division, Department of Justice, in 1992. Succeeding witnesses will expand on this theme.

(II) *We would also like to point out where we feel the agency has made errors in policy.*

At a Santa Clara meeting of National Forest Homeowner members, and others, on Saturday, Feb. 7, 1998, Randy Karstaedt, Special Uses Group Leader, USFS Lands Division Washington Office, revealed what we felt was a brand new reading and interpretation of the regulations governing the fees charged for Recreation Residence Permits. This new interpretation, if implemented as proposed, will raise fees dramatically on many cabins immediately and on all in the long run.

At that meeting it was pointed out that through the ten years of negotiation and renegotiation during the 1980's which resulted in the national recreation residence policy, the cabin owners were assured and reassured that the language of the policy pertaining to appraisal and establishment of cabin fees would "never" result in permittee lots being appraised "as if" they were fee simple lots, because the many differences between permitted lots and fee simple lots made them obviously not comparable. We were repeatedly told that the appraisal had to begin with an estimated fee-simple value in order to arrive at some form of reasonably "objective" base figure.

Among the many differences which we were assured would be taken into account during the appraisal process were: (a) the legal constraints to which permittees were subject by Forest Service restrictions on size, color, landscaping, remodeling, etc.; (b) the limitations on rental; (c) the limitation on the use of the property as a year-round dwelling unit; (d) the fact that a long-term lease of fee simple land which required lessee investment would almost always entail an option to renew the lease, not present with permitted lots; (e) the obvious fact that long-term leases of fee simple property are legal assets which lending institutions will accept as collateral for a loan whereas permits are not; (f) the fact that banks will not give construction loans for improvements on permitted land whereas they will on improvements constructed on a long term lease property; (g) the fact that permittees may not deny public access across their lots where fee simple leasees may; and (h) the fact that permittees are not entitled to "tenant's rights" where fee simple lessees are.

These points were cited repeatedly to permittees during the years when the Recreation Residence policy was being formulated as "reasons" why any appraisal of the value of the land would not be comparable to fee simple land, but would reflect the lands "cash market value based upon its use as a recreational residence homesite." (This is a direct quote from the policy statement.)

To every one of these points Karstaedt, and John Shilling, Assistant Regional Forester, Region 5, who was also present that day, replied that it was considered by the agency that all these points of difference between a fee simple sale or lease were compensated for by the fact that permittees were only paying 5% per year of the assessed value instead of the 7 to 18% they claim would be a standard lease fee on fee simple land. (However, we discover that many agricultural land leases are at a 5% rate, and lower.)

When asked directly what the above underlined phrase meant, both men hedged, but said essentially that those words meant nothing.

This witness, some eight years ago, personally asked Ken Myers, then Deputy Director of Lands, USFS, now retired, whether the policy meant that our lots would be appraised at the same value as fee-simple land. He referred to the above underlined phrase and read it aloud in a public meeting, saying that it was clear that we would "never" be appraised at fee-simple market value, because that would be comparing apples and oranges.

Yet, it is now the announced interpretation of the policy to assess every permitted lot as if it were being offered directly for sale on the fee simple market and make the permit fee conform to 5% of that assessment. This has resulted in an increase in fees in some cases of over 1000%.

The absurdity of this position is obvious. If a private land owner were to offer a 20 year lease with the restrictions demanded by the Forest Service, there is genuine question whether anyone would be willing to lease the land at any price. Just the inability to control access to the land would make it worthless in most people's eyes.

It is our contention that the agency has either (a) consistently and deliberately misrepresented its position to the permittees and the public or (b) more likely reinterpreted the language of the policy so broadly as to have unilaterally and illegally changed their policy without notice.

The real answer to this problem is that the Forest Service should properly instruct its appraisers to discount their appraisal to provide for the many restrictions and limits included in the permit, as is provided in S-1938.

We would also like to comment on where we feel the agency has made errors in the application of its already flawed policy.

From region to region, forest to forest and district to district we encounter clear discrepancies in interpretation and applications of the guidelines published in the policy. It is absurd to have the incredible variations unveiled during this "reappraisal." Comparable permits according almost exactly the same amenities have permit fees varying by 15,000% or more. We all know that land values vary from location to location, but 15,000% variation *for the same use* is absurd.

Quite simply, the agency is not genuinely applying the policy evenly and fairly across the nation. S-1938 is a clear, and we believe *fair* way to bring reason and equity to this appraisal process.

(II) *Next, contrary to what the Forest Service and others have told you, cabin owners already pay their 'fair share,' and more.*

\*\*\* Recreation Residence Permittees pay the highest use fees, per acre, of any of the many users of National Forest lands. Assuming an average lot size of 1/4 acre, cabin permittees, even under the old fee structure, were paying over \$2,400/acre/ year, with many paying much more. Under the Forest Service's currently proposed fees, cabin owners would be paying an average of over \$8,000 per acre.

With the exception of a couple of mountain tops with a \$1,000,000,000 or so of electronic equipment on them, no other users on National Forest lands pay as much per acre. Cabin owners pay more per acre than:

- ski resorts,
- miners,
- grazing permittees,
- utility rights of way,
- communication sites,
- or any of the various camps and groups who use the forest lands.

\*\*\* Recreation Residence Permittees, by regulation, cannot restrict or prohibit public use of their "lots" and are generally prohibited from building any additional structures or 'improvements.' Their actual 'permitted area' over which they have any control consists only of the "footprint" of their cabin. By any 'real world' real estate standard, their actual leased 'area of control' already pays more per square foot than most commercial leases in comparable fee-simple areas.

As cabin owners already return the highest revenue per acre of any use in the National Forest System, it is foolish and absurd to insist that we are not paying our 'fair share.'

(III) *The Recreation Residence Program is the most successful provider of recreation opportunities managed by the Forest Service.*

\*\*\* All surveys we have seen indicate that Recreation Residences provide more RVD's (Recreation Visitor Days), per acre, than any other use of the National Forest System. Our surveys show that most of our permittees provide well over 500 RVD's each year. That is over 2000 RVD's per year per acre to a broad spectrum of the American people. In all surveys we have seen, the average Recreation Residence provides no less than 5 times and sometimes over 100 times as many RVD's as the average camp site.

\*\*\* Because of the nature of the recreation provided, they also overwhelmingly provide the greatest recreation time and opportunity to the retired, the elderly, and the disabled. Cabins are one of the few Forest Service recreation programs that actually do provide rich recreation experiences to the elderly and disabled...those Americans which, by law, the agency is directed to consider in its programs. Because of the nature of the cabin experience, these cabins are overwhelmingly, a "family" experience...unlike most other regular uses of the National Forests.

(IV) Given that the average "lot" size is under 1/4 acre, all of the 16,200 Recreation Residences occupy less than 4,000 acres of the 192,000,000 acres currently in the National Forest System, roughly .002%, two one thousandths of one percent.

This is less of the public lands than are permitted to, and generally exclusively used by, many profit making resorts...and we approve of that resort usage. And yet the agency tells you that our cabins take too much land away from "public use."

(V) *You are also told by the agency that we are a "private use of public lands," with the implication that this is somehow "wrong."*

First, this tells us that we are not members of the "public." I am sure that every member of this committee would agree that these retired school teachers, small businessmen - even government employees, are members of the public. But not the Forest Service. Not only is that inaccurate, it is patently absurd.

Second, we are unable to imagine a human use of the public lands that is not "private," at least for the period of use. Are we any more "private" than the extensive reservations of public lands for ski resorts, commercially operated campgrounds, mining reserves, logging reserves, etc. (many of which occupy, for their exclusive commercial use, more Forest Service land in a single activity than that occupied by all the Recreation Residences combined)? We believe those are valid and desirable uses of the public lands, and we think Recreation Residences are, too. One retired Forest Service officer told us the only "public" use of the National Forest he could think of was when the military held maneuvers there.

Third, there is no reasoning, no evidence, no logic to this "private use of public lands" phrase. There is no reason given why such use is *bad* ...or *good*. It seems, rather, the blind repetition of an ideological 'mantra' for those who wish all the public lands locked away from public use.

We are also told that we are a "privileged elite." Aside from casting a hostile and insulting stereotype, this goes to the heart of this bill. If the Forest Service continues to raise these user fees as they have been doing, *they will some have made a self-fulfilling prophecy by pricing middle class Americans out of these cabins and creating expensive 'ghettos' on the public lands.*

We are also told that we are a "privileged elite." Aside from casting a hostile and insulting stereotype, *this goes to the heart of this bill*. If the Forest Service continues to raise these user fees as they have been doing, *they will some have made a self-fulfilling prophecy by pricing middle class Americans out of these cabins and creating expensive 'ghettos' on the public lands*.

(VI) We also wish to comment on the appraisal process as reflecting a larger national problem.

It is a simple historical fact that forest cabins as a recreational activity are deeply embedded in American culture. Our literature is steeped in the tradition. It is also very clear that mountain/forest cabins on private lands are widely available on the open market almost everywhere in the eastern United States. But this is not true in the West.

From agency documents we discover that only about 8% of forest lands in the East are in Federal hands, but roughly 82% of the forest land in the West is federally owned (excluding Alaska). This is an accident of history. However, it reflects on the problem at hand in that the population in the West has soared while the amount of land available has actually decreased through federal land acquisition programs.

In other words, the Congress and the Executive Branch have created a situation where a steadily increasing demand for a traditional form of American recreation, the forest cabin experience, is slowly, thru Forest Service policies, being restricted, particularly in the west, to only the wealthy. And many of your middle-class supporters are being forced out. While this is not a big political issue today, the signs that it may become an issue in the future seem to us to be on the horizon.

The answer seems clear. Here is the most revenue positive recreation program in the Forest Service "Recreation Spectrum," one which broadly serves the disabled, the elderly and families, and one which takes up only a miniscule amount of the Forest Service lands...and the number of cabins gets smaller every year. The agency has clearly refused to act to implement its own stated policies. Only the Congress has the power to direct the Executive Branch to act to address this problem through the creation of an environmentally and economically responsible answer to this clear public need.

Please, gentlemen, we plead for your help in protecting us from a powerful and seemingly insensitive bureaucracy which seems determined to deny us our rights and our property. Stop this process now...and direct the agency to arrive at a clear and equitable policy for the establishment of fair and reasonable fees for Recreation Residences. We ask you to vote to pass HR-3327.

Thank you, gentlemen, for this opportunity to comment on the bill you are considering today.

Testimony submitted by:

Paul R. Allman  
Director of Cabin Owner Affairs  
American Land Rights Association  
2316 Eunice St.,  
Berkeley, CA 94708

(510) 525-7223

**Testimony of**

**Richard M. Betts, MAI, ASA, SRA  
California State-Certified General Appraiser  
Betts & Associates**

**on**

**S. 1938, the Cabin User Fee Fairness Act of 1999**

**before the**

**Subcommittee on Forestry, Conservation and Rural  
Revitalization  
of the  
Senate Committee on Agriculture, Nutrition, and Forestry  
Washington DC – March 22, 2000**

**1936 University Avenue · Suite 300 · Berkeley, California 94704-1024  
Telephone 510/845-6988 · FAX 510/845-0780 · E-mail [rmbetts@juno.com](mailto:rmbetts@juno.com)**

**Written Testimony of  
Richard M. Betts, MAI, ASA, SRA  
California State-Certified General Appraiser  
Betts & Associates**

Mr. Chairman, my name is Richard M. Betts, and I am a California State-Certified General Appraiser and the principle partner in Betts & Associates, Berkeley, California. I appreciate the opportunity this afternoon to present to the subcommittee my analysis of the difficulties that have arisen with respect to the determination of appropriate fees for occupancy of cabin lots in the National Forest System.

I was retained in 1998 to assist a coalition of cabin owners with the analysis of the appraisal methodology and instructions employed by the USDA Forest Service in determining special use fees for the use and occupancy of these cabin lots, and to make recommendation to the coalition about possible solutions that meet any statutory or political requirements for capturing fair market value for the federal government. Their coalition consisted of representatives of the National Forest Homeowners, American Land Rights Association, California Forest Homeowners Association, Oregon Forest Homeowners Association, and Sawtooth Forest Cabin Owners Association in Idaho. I am being compensated by the coalition for my appearance today, but the coalition has exercised no control over my statement nor whatever replies I might offer in response to questions from the subcommittee.

**Qualifications**

I would describe myself as a very active appraiser, specializing in complex properties and complex situations. I'm the holder of the MAI, ASA (Real Estate), and SRA professional designations, with more than 35 years of experience in appraisal and real estate economics consulting.

I hold Bachelor of Science and Master of Business Administration degrees from the University of California, Berkeley, with a major in Real Estate and Urban Economics, and a minor in Economics. I've since received substantial postgraduate education from colleges and professional groups. I have also taught extensively, including courses for the University of California, Berkeley, School of Business, University of California, Berkeley, Extension Division, University of Southern California, Merritt Community College, American Institute of Real Estate Appraisers, Society of Real Estate Appraisers, Appraisal Institute, American Society of Appraisers, International Association of Assessing Officers, and others. And I have also lectured extensively, giving speeches, workshops and seminars for professional groups, community colleges, and community organizations.

I am the author of a number of books and articles, receiving the Robert H. Armstrong Award from the American Institute of Real Estate Appraiser in 1986 for my article, "The Impact of Securitization on Real Estate Appraisal." I was the author, in 1979, of The Instructor's Guide for Real Estate Appraisal, published by the State of California Department of Real Estate. I am the coauthor, with Silas Ely, of Basic Real Estate Appraisal, now in Fourth Edition, published by Prentice Hall, 1998. I am also the

coauthor, with Dennis McKenzie, of The Essentials of Real Estate Economics, also published by Prentice Hall and now in Fourth Edition, 1994.

I have been accepted as an Expert in more than ten Superior Courts, in the District Courts, in Federal Bankruptcy Courts, and in Assessment Appeal Boards of six counties in California. I also have extensive arbitration experience, both as a "party" arbitrator, and as a neutral third, in numerous private arbitrations. I am on the Panel of Arbitrators for the American Arbitration Association and have served as an arbitrator on AAA cases, as well as a lecturer at AAA training sessions in California and Hawaii. I have also performed assignments for the U.S. General Accounting Office, the U.S. Department of Justice, the National Park Service, the U.S. Fish and Wildlife Service, the California Auditor General, and numerous other agencies, large and small corporations, organizations, and private individuals.

#### **Certification**

I don't mean to belabor my credentials, Mr. Chairman, but I think it is important that my recommendations to the coalition of cabin owners be evaluated by this subcommittee within the context of the extensive training and experience I brought to the task. I also want to certify to this subcommittee the same statement I signed in conveying to the coalition my report dated June 4, 1999, containing my analysis and recommendations; that—

- The statements of fact contained in the report (and my testimony today) are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property (if any) that is the subject of this report, and I have no personal interest with respect to the parties involved.
- I have no bias with respect to any property that is the subject of the report or to the parties involved with this assignment.
- My compensation from the cabin coalition was not contingent upon an action or event resulting from the analyses, opinions, or conclusions in, or the use of, the report.
- My analyses, opinions, and conclusions were developed, and the report was prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have not made a personal inspection of the property that is the subject of the report.
- No one provided significant professional assistance in my preparation of the report.



### **Documentation**

In conducting my analysis for the cabin coalition, I reviewed 16 key documents. These included the Forest Service Recreation Residence Authorization Policy (59 FR 28714), relevant sections of the Forest Service Handbook, various government memorandums and correspondence, and testimony offered in earlier congressional hearings. I also examined in detail the initial appraisal reports and several second appraisal reports from cabin tracts on National Forests in Idaho, Oregon and California. Congressional staff and members would find at least some of these materials essential to the understanding of the problem and potential solutions. If so, I have made the full bibliography available to the subcommittee staff.

### **The Problem**

The United States Forest Service has, for many years, maintained a program of providing sites for cabins in the national Forests. Nearly all of the cabin sites are grouped into clusters, called a Tract. Each cabin site consists of a dimensioned parcel, drawn on a map. No subdivision process is followed, and no local approvals are involved. Holders of a Permit to use a lot are allowed to build a small cabin, for occasional use only, subject to many restrictions. Usually, the Forest Service provides only raw native land, and the permittee must pay the expense, and bear the risk, to provide and maintain any access road or trail, as well as any desired water, sewer, electrical, or other utility system. The permit is only valid for 20 years, and the permittee may have to remove all improvements at the end of the term. However, the permit can be renewed, and they usually are. The permit can also be canceled, with 10 year's notice, and they sometimes are.

The permittee pays a fee for the permitted limited rights of use to the lot. Currently, this fee is set at 5% of the market value of the raw land at the start of the permit term, updated annually by the Implicit Price Deflator – Gross Domestic Product, (IPD). The market value is set by an appraisal of a sample lot, or lots, in the Tract. Currently, the Forest Service has started the first reappraisal sequence in some years, as the policy had been under administrative review for some time. I examined the early results of that process, to determine if corrective action is needed.

### **The Conclusions**

It is clear that corrective action is needed, that the early results of the process indicate a number of problems, of a systematic nature. As somewhat of an aside, there appear to be several significant public policy questions with the policy as conceptualized. For instance, the IPD index does not match the changes in local land values around the country, leading to substantial under- and over-indexing, and abrupt changes in permit fee upon reappraisal. I am also concerned about the lack of support for the 5% return, given the unusually large number of negative influences that are hidden within it, rather than being enumerated in the appraisal process.

The primary focus of my analysis was upon the appraisal process itself, including the instructions and their implementation. Unquestionably, major work is needed, to clarify the instructions, remove material that is contrary to the adopted Policy, and guide appraisers to proper practice in this very complex and unusual setting. A set of those instructions is attached to my testimony.

The major problem area I noted is especially in the definition of the property being appraised. Policy clearly states that the Forest Service is providing raw acreage, but most appraisals are of subdivided lots. A second major problem is with adjustments for access and utilities, usually provided by the permittees, but often incorrectly handled in instructions and appraisals. Added problems are noted with the selection of market data upon which to base the valuation, and the adjustment of the market data for relevant differences.

Based on my analysis, I have made recommendations to the cabin owners' coalition for appraisal guideline language, intended to provide clearer direction to appraisers, based upon the problems noted as of June 4, 1999.

#### **Summary of Findings**

The four elements of the current Forest Service Recreation Residence Permit Fee program are 1) the selection of representative sample lots to appraise, 2) the appraisal of the market value of the Forest Service land, 3) the percentage of value charged as the fee, and 4) the annual fee indexing procedure. In my opinion, there is strong reason to be concerned about the probable consequences of the policy as presently envisioned. With respect to the policy as implemented, it appears that the process for selecting sample lots is working satisfactorily. However, the evidence clearly shows that the current appraisal process and the annual indexing procedure are not working satisfactorily. And it is highly unlikely that the current fee percentage, 5%, correctly reflects the positive and negative elements that it is supposed to capture.

#### **Issues Regarding Policy Consequences**

To examine the underlying philosophical goals of the policy is not at all a primary goal of my work in this matter. Nevertheless, the context of my work would be remiss if it did not, at the least, point out some of the more obvious anomalies I've observed.

One public policy question involves giving the public a reasonable planning horizon, for investing in constructing and recovering benefits from a cabin. The policy appears to call for an annual fee that represents a 5% return on the then-market value of the native undeveloped land, but with permission to build a cabin, for recreational residential use only. In areas of the country where there are larger increases in population, income, or other factors that increase demand, the result will be that cabin fees will certainly escalate faster than the normal increases in income of many cabin owners. This forces out those who are less well off, in favor of those better able to pay the new higher rent. It might be better public policy to give a cabin-building family some better assurance of being able to stay there through a generation cycle, perhaps 30 years, or until the title transfers. Such an improved policy might, for example, cap the permit fee increases arising from market value increases to no more than the CPI, with recovery of the excess upon transfer.

A second public policy question arises when the government creates a monopoly by artificially restricting the supply of cabin sites, and then seeks to be paid rent based on the high prices arising from its artificially contrived shortage. In some parts of the country, it seems very likely that the Forest Service has so completely eliminated private land holdings and cabin sites that there is no private competition for the Forest Service

cabin lots. In turn, the current Forest Service policy of allowing no new lots, and of selectively eliminating existing ones, further eliminates supply. Here, then, the Forest Service almost certainly has so constrained supply as to artificially drive up values, and the rents to be paid. To profit from such a system does not appear either fair or good public policy.

#### **Annual Fee Indexing Procedure**

It was not part of the scope of my work to analyze this issue in detail. However, it is clear that the current fee indexing methods are not working at all well. Some lots appear to have been indexed well over what is probably about their correct amount, while others may be well under. Forest Service staff has explored ideas for alternate indexes, and I believe that these ideas, and others, should be investigated. It is possible, too, that a review of this topic should also address the public policy question of a reasonable planning horizon, which I have raised above.

#### **Fee Percent of Value**

It also was not part of the scope of work to analyze this issue in detail, but what the percentage represents is nonetheless closely tied to adjustments in values addressed in Section 6 of S. 1938. The percentage of market value that is charged as a fee is set at 5%. This number has been in use for many years, and there does not appear to be any evidence to establish its basis or appropriateness. I have assumed that this rate is to be left in place, but I have grave doubts that it fully reflects all of the permit limitations that it is supposed to reflect.

It is alleged by the Forest Service that this rate is discounted from the land return rates found in the market, in order to reflect a number of restrictions imposed upon permit holders that are not found in private market land transactions. Thus, there is supposed to be a good relationship between the amount of the reduction in the rate and the reduction in desirability resulting from the restrictions.

Land rates of return, (as a percent of the first year's value, as is the case here), are influenced by numerous factors, including the length of the contract, (longer increases the rate), if the rent is periodically indexed for inflation, (which lowers the rate), if the land is subordinated to a construction loan, (increased rate), and if performance on the contract is guaranteed by tenant expenditures on buildings (which lowers the rate). Location also influences land return rates, as urban rates are considered higher than rural rates.

Forest Service staff has written of market rates that range from 10 to 17%, in justifying the amount of discount produced by the 5% rate. However, it is likely that rural rates for 20 year leases with annual indexing, secured by development of cabins, often also secured by the expense of developing water, septic, electricity and roads, are more in the 7 to 10% range, leaving a relatively slim discount for the substantial ownership and use restrictions, so well documented in prior hearings on this topic.

#### **The Appraisal Process**

The problems with the appraisal process are numerous, but appear to be interrelated, and may be summarized as follows.

**One:** The implementation of the appraisal process is producing a wide variation in results across the country, and a general bias toward excessively high values. Anecdotal evidence indicated that relatively few lots are being undervalued, but many are being substantially overvalued.

**Two:** Review of actual appraisal reports indicates widespread misunderstanding of the assignment by appraisers.

Example: Appraisals are typically being performed by relying solely on sales of privately subdivided lots, usually with some lot improvements, utilities, and road access, often accessible and useable year-round. However, the Specifications make clear that the Forest Service is only providing unsubdivided raw acreage, ["in a natural, native state," C-2.1(f)(3)], usually without lot improvements, utilities or road access.

Example: Some appraisals are performed apparently assuming that permit holders should be charged for the value contribution of access roads and utility systems, without any investigation or documentation as to whether the access roads and utility systems were provided by the permittees or the Forest Service, despite the direction set forth in the Specifications.

**Three:** Appraisal Guidelines provided by the Forest Service are giving incorrect, biased or inadequate definition of the assignment, providing incorrect, biased or inadequate direction to both regional staff and contract appraisers.

Example: Appraisers are given explicit factors that they must consider, in some cases without adequate instruction that other relevant value factors must also be considered, leading to appraisals that ignore, for example, significant locational differences. See also the examples, above, of apparent appraiser misunderstanding.

Example: Forest Service materials indicate that appraisers should reflect the value increment resulting from power, water, or telephone systems or public roads owned by other public agencies. However, under the clear language of the Specifications, this is not correct whenever these systems 1) were not present at the time of the first cabin permit at that location, or 2) were installed at the expense of the cabin holders. In addition, there are undoubtedly cases where the system was indirectly paid for by the permittees, through monthly bills or annual property tax assessments, for example, and it is unquestionably the intent of the policy not to reward the Forest Service for those features.

**Four:** Review of actual appraisal reports indicates widespread problems with application of the particular appraisal skills needed to accurately perform these assignments.

Example: Appraisers are adjusting for the existence of lot access, utility systems, or building improvements, correctly using the depreciated current replacement cost of the improvements, but apparently without adjustment for the extra costs involved in construction in the more remote locations, without allowance for the non-contractor cost elements that impact value, and using depreciation procedures that do not reflect the real economic lives of such improvements. See also the earlier examples.

**Five:** Statements by Forest Service staff indicate a lack of understanding of appraisal theory, as applied to these assignments.

Example: Staff has indicated that the historical cost of cabin permittee-provided roads, utility system, and lot improvements is to be deducted from the value conclusion, when using comparable sales that have such amenities and lot improvements. In fact, to estimate the market value of the lot, the market value of those improvements must be deducted. There is no debate about this issue among appraisal theoreticians.

Example: Staff has indicated that only the depreciated cost of access, utilities, and/or improvements should be deducted, and has indicated that any deduction for the risks faced in installing these items must be ignored, along with any allowance for overhead and profit. There is no debate among appraisal theoreticians about including these items in cost-based value analyses of the type indicated here.

## RECOMMENDATIONS

### General Policy Statements

**One:** The policy probably should seek to base the fee on the Market Value of the “fee simple estate of the National Forest land underlying the lot,” (#33.3), for use as a seasonal recreation residence site only.

Comment: However, it is very likely that an alternative system could be developed that would be equitable, much less expensive, less controversial, and less error-prone.

**Two:** The fee should be based on a percentage return on the estimated market value. The percentage return will be 5%, said number being understood as reflecting a Market rate of return, adjusted downward for the 1) short term of the permit, 2) the substantial limitations placed by the permit upon the use of the lot and the term of the permit, and 3) the public rights of use to the lot. The limitation of the use to seasonal, non-permanent use is understood not to be reflected in the rate, but rather in the value process.

Comment: I am simply assuming that this part of the process will be continued. It bears repeating that there does not appear to be any documentation to support this figure, nor does it appear likely that it correctly represents the correct discount from market rates of return for the many restrictions imposed on the permittees.

**Three:** The market value should be determined by appraisals of representative lots, selected in the same manner as now established.

**Four:** The appraisals should be performed by a “state-certified general real estate appraiser,” licensed to practice in the state where the lot(s) are located.

**Five:** Each appraiser should be required to perform the appraisal in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), then-current edition, and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), then-current edition, and with the Specifications, as amended to reflect policies and guidelines established by the Congress.

**Six:** The appraisal report should be a "self-contained report," as that term is defined by USPAP, and the report should be compliant with the reporting guidelines established in UASFLA.

#### **Specific Appraisal Guidelines**

**One:** The appraisal should estimate the market value of the raw land provided by the Forest Service, available for use as a seasonal cabin site. The appraisal should not appraise the lot as if a legally subdivided lot.

Comment: The Forest Service is indeed only providing raw land, without the burden of the expensive mapping and approval process faced by private parties. The costs and risks of this process are reflected in the sale prices of all private subdivided lots, (whether the specific lot predated the current expensive process or not). It is unfair to ask cabin permittees to pay rent on something that the Forest Service did not provide.

**Two:** Where the sold parcels that are identified in the marketplace are small parcels, whether within a subdivision or not, the adjustments must reflect the market difference between such small legally divided parcels and lots such as the subject, which are legally undivided portions of a large acreage. Where the sold parcels are relatively large parcels, the adjustments must reflect the market difference between the sales and the subject lots, due to the greater land area that the buyer will control in the sale, on the one hand, and the possibility of more than one cabin lot, if allowable, on the sale parcel. It may be desirable to obtain both types of comparable sales, if possible, in order to better bracket this adjustment.

Comment: The Forest Service cabin lots do not have an exact equivalent in the private marketplace. The lots have the same "cabin site benefit" that gives value to a privately held parcel, but they lack the feature of being a separate legal parcel. On the other hand, they are more valuable than a "pro-rata" allocation of bulk acreage, as each has its own cabin approval, while the bulk acreage often only has permission for one cabin. The cabin sites are, on a price per acre basis, inferior to a privately divided lot of similar size, but superior to a larger parcel with zoning capability for only one cabin. However, on a parcel price basis, the Forest Service cabin lots are inferior to both privately divided parcels of similar size and larger parcels limited by zoning to only one cabin site. It is necessary to spell out this unique aspect of the appraisal assignment.

**Three:** The appraisal should reflect the market value contribution of any utilities, (such as water, sewer, electricity, or telephone), or access roads or trails, etc., that can be clearly established as having been provided and maintained by the Forest Service. Utilities and access provided from the general funds of any other government agency, as opposed to a special district or other user funding source, shall also be reflected. All other utilities and access should be presumed to have been provided by or funded by the permittee.

Comment: Some Forest Service lots were developed many years ago. Policies at that time did not require that the permittee maintain permanent records of work performed or expenditures. The burden of proof as to the original funding for utilities

and access within the Forest should now be on the Forest Service. Further, where the original facilities were funded by the Forest Service, but have been maintained for many years at permittee expense, these should be treated as if provided by the permittees. However, some facilities will have been paid for by local government funds not generated for that purpose by the permittees. It is not practical to separate those predating the Forest Service Tract from those installed since, and it is more equitable that the permittee's rent reflect both than neither.

**Four:** The appraisal should be based upon analysis of one or more of the following categories of market data:

- Sales of larger privately-owned acreage parcels of land, generally somewhat similar in size to the Forest Tract being examined,
- Sales of privately-owned individual smaller parcels of land, not part of an established subdivision,
- Sales of privately-owned lots in a mapped and recorded subdivision,
- Sales of cabins in the Forest Service tract in question, or other nearby similar Forest Service tracts.

Comment: It is desirable to give the appraiser the ability to rely on all possible sources of market information. Available data in some locations may be much more limited than in other locations. However, it is clear that appraisers need some guidance ranking the relevance of the data that might be available.

**Five:** The relative weight to be given by the appraiser to the market data that has been collected should be in the same order as set forth in guideline **Four**, above, (sales of larger privately-owned acreage parcels of land, generally somewhat similar in size to the Forest Tract being examined being given the most weight). This weighting reflects the relative similarity with the land provided by the Forest Service, and the inherent problems with adjusting evidence of a less similar nature to accurately reflect the differences. Sales of cabins in the Forest Service tract in question (or nearby) should not be used, unless there is no other relevant data, lest the appraisal reflect local artificial scarcity factors caused by Forest Service policies.

Comment: It is important to stress to appraisers that the potential evidence varies in its usability, lest they select data on the basis of its ease of access, for example, or other, less relevant factors. It is also important to limit appraisers use of less reliable information to those times when it is the only data available. Please note that the results of such an appraisal may be artificially inflated.

**Six:** The appraiser should consider, and adjust prices of the sold parcels for, all factors likely to materially influence market value, in estimating the market value of the specific parcel. These factors would include, but are not limited to, all typical value influences set forth in standard appraisal literature. Particular attention should be paid to differences in the locations of the parcels, in seasonal accessibility, and in the physical ease or relative cost of cabin construction.

Comment: I have not tried to provide a "shopping list" of possible factors. Instead, I have tried to use standard appraisal language, pointing to the sources that appraisers know from their training. However, I have added a sentence here to

stress those issues that I believe are most likely to cause problems in this circumstance.

**Seven:** Where the sold parcels, (market data), have cabin improvements, or lot improvements, (such as utilities, access road, or lot grading), and the Forest Service lots being appraised did not have these amenities provided by the Forest Service, the appraiser should adjust the sales prices of the sold parcels by the market value contribution of any such amenity. The adjustment process also needs to reflect the construction difficulties for such amenities at the subject lot, and must include an appropriate allowance for entrepreneurial profit and overhead.

Comment: It clearly is important to remind appraisers that it is the market value impact of these amenities that must be adjusted for, including all typical cost elements, and using costs applicable to the subject lot, not those at the location of the sale. Please note that these lots have the normal risks associated with development, reflected in the profit and risk allowance noted above. There also are abnormal risks associated with these sites, which are discussed in guideline **Eight**, below.

**Eight:** Where the sold parcels have wells, (or water systems), and/or septic systems, and the lots being appraised do not have these facilities provided by the Forest Service, the adjustment must reflect not only the depreciated current replacement costs of installing such facilities at the lots being appraised, as set forth in guideline **Seven**, above, but also must reflect the risk deduction that is taken in the market when such facilities are absent and the buyer cannot know at sale whether it will be routine or highly difficult to install them. This risk allowance might be the cost of drilling for water at several locations, or drilling deeper, or the cost of an alternate, more expensive method of proceeding.

Comment: Appraisers clearly need to be reminded that the adjustment amount must reflect the thinking in the market. Where no well or septic is in place, and the buyer is to bear all of the risk regarding cost overruns, or complete failure, to complete them, it is clear that the discount in the market value is greater than just the cost of a well, or successful system. That discount belongs to the party who bore that risk, usually the permittee.

These recommendations will sound familiar to those who have already read S. 1938. The cabin coalition has made available to the Chairman's staff over the past two years as much information as was available to them about various alternatives worth examining. A number of alternatives were discarded as unworkable and unlikely to produce a reliable, fair process of determining fees over time.

There are a number of methodologies available to the subcommittee for setting fees in a manner that returns fair market value. For example, you can mandate an entrance or user day fee, to be paid every time the cabin owner visits the cabin. Or, you can determine the average cost of renting and divide this number by days or value. You can establish "market value," or what the use (amenity) would be worth for rent or sale in the general market, exposed to a large number of people. A more nebulous measure of fair market value is "use value," the value to a specific user for a specific use.



It was clear to me in discussions with the cabin owners and the Forest Service that capturing fair market value is both a consideration in setting policy and a consideration in compliance with statute. In making new law, it is the choice of the Congress whether to further the practice of capturing fair market value, or to set some new course.

The recommendations I have offered further the policy and practice of capturing fair market value for the occupancy and use of forest cabin lots.

I believe that, if adopted, these recommendations will do the job without the inconsistencies, errors and ambiguities contained in the current Forest Service policies, procedures and instructions for determining the market value of cabin lots. The current fee determination process leads to errors, misapprehensions and misunderstandings on the part of appraisers in the field, who are being asked, without sufficient and clear direction, to examine a very complex and unusual setting.

I also believe it is unlikely we will see the appropriate changes occur, absent clear guidance from Congress and one or more of our professional appraisal organizations about how to do it.

I very much appreciate this opportunity to testify. As the subcommittee continues its work on S. 1938, I will be available and pleased to assist as needed.

**TESTIMONY**

- MY NAME IS JOE CORLETT, A RESIDENT OF BOISE, IDAHO
- I AM A CERTIFIED GENERAL REAL ESTATE APPRAISER IN IDAHO AND OREGON. I AM ALSO AN MAI MEMBER OF THE APPRAISAL INSTITUTE. I HAVE BEEN IN THE APPRAISAL BUSINESS 26 YEARS.
- I AM TESTIFYING IN GENERAL SUPPORT OF S.1938 FOR IMPROVING CONSISTENCY AND FAIRNESS IN APPRAISAL APPLICATIONS ON FEDERALLY LEASED CABIN SITES.
- MY SPECIFIC EXPERIENCE IS WITH THE CABIN TRACTS ON PETTIT LAKE, IDAHO, WHERE I ACTED AS THE SECOND APPRAISER AFTER THE ORIGINAL GOVERNMENT APPRAISER VALUED THE NATURAL, NATIVE SITES AT A MINIMUM OF \$450,000 TO A MAXIMUM OF \$600,000.
- ACCORDING TO MY ANALYSIS, THE NATURAL AND NATIVE SITES HAD MINIMUM VALUES OF \$83,000 TO A MAXIMUM VALUE OF \$212,000.
- IN MY OPINION, ERRORS WERE MADE IN THE GOVERNMENT'S APPRAISAL BY CONSIDERING IMPROVED LEASEHOLD SALES THAT HAD OCCURRED IN THE TRACTS, BY NOT RECOGNIZING EXTERNAL FACTORS CREATED BY THE PRE-EXISTING, NON-CONFORMING USES OF THE CABINS IN A COUNTY THAT ZONES THIS AREA FOR MINIMUM SITE SIZES OF TEN ACRES. (EXAMPLE: 6-STORY BUILDING ON 3-STORY SITE).
- ALSO, CABIN OWNERS DEVELOPED THE TRACTS WITHOUT GOVERNMENT ASSISTANCE. ACCORDING TO APPRAISAL INSTRUCTIONS, ALL IMPROVEMENTS ON AND TO THE LAND PLACED BY THE LESSEES ARE TO BE EXCLUDED. IN MY OPINION, THE INCENTIVES DUE TO THE LESSEES WERE INCLUDED IN THE GOVERNMENT APPRAISAL.
- A RECENT SALE OF AN IMPROVED CABIN SITE WITH AN 854 SQUARE FOOT, GOOD QUALITY RESIDENCE SOLD FOR \$430,000 TO A LOCAL REAL ESTATE BROKER IN AN ARMS-LENGTH TRANSACTION, FURTHER SUPPORTING THE GOVERNMENT'S OVER-VALUATION.
- INSTRUCTIONS ISSUED TO ME THROUGH REGION 4 VIA A MEMORANDUM FROM CHIEF APPRAISER TITTMAN WERE, IN MY OPINION, CONTRARY TO ORIGINAL WRITTEN INSTRUCTIONS. I WAS INSTRUCTED, VIA THE MEMO, NOT TO USE A SUBDIVISION APPROACH, AND TO CONSIDER LEASEHOLD CABIN SALES. I HAVE ATTACHED THE MEMORANDUM, PRELIMINARY REVIEW AND MY RESPONSE REGARDING THESE ISSUES.
- I AM AVAILABLE FOR YOUR QUESTIONS AND THANK YOU FOR THE PRIVILEGE OF PROVIDING THIS TESTIMONY.

---

---

**DOCUMENTS SUBMITTED FOR THE RECORD**

MARCH 22, 2000

---

---

Subject: S.B. 1983  
Honorable Daniel Akaka  
U.S.Senate

Please accept this letter as my request for you to support and co-sponsor S.B. 1983 "The Cabin User Fee Fairness Act." I urge you to attend the hearing regarding the bill and Forest Service Recreation Residence fees scheduled for March 22, 2000 in the Forestry, Conservation and Rural Revitalization subcommittee of the Senate Agriculture, Nutrition and Forestry committee. After reviewing my letter, please forward this document as my testimony for the hearing and have it entered in the official record. Please address it to the Honorable Larry Craig, Chairman, Forestry, Conservation and Rural Revitalization subcommittee, 328A Senate Russell Long Building, US Senate, Washington DC 20510.

Recreational residences in the national forests provide forest recreation to the disabled, elderly and entire families that have been good stewards of the land. This bill supports use fee increases, but with consideration to the restrictions on the land.

I believe the bill offers a fair and reasonable method for the cabin fee appraisal. This bill takes into consideration the limitations associated with the land's use (such as the absence of roads and utilities, building restrictions, etc.) and allows these factors to be considered in the appraisal process.

Thank you for your interest and consideration of my concerns. I encourage you to co-sponsor this bill, and I ask that you support this bill.

Sincerely,

Jeanne Gibbs  
57-101 Kuilima Loop-22W  
Kahuku, Hawaii 96731

Stanley N. Sherman  
13700 Deakins Lane  
Germantown, Maryland 20874

March 21, 2000

Chair, Forestry, Conservation and Rural Revitalization Subcommittee  
United States Senate

Reference: "The Cabin User Fee Fairness Act," S 1938

I request that my statement (immediately following) be included in the record of the subcommittee's hearing to be held on March 22, 2000 in Russell 238A.


I am a cabin owner of a cabin located in the Eldorado National Forest. The cabin was built by my father in 1938. My family and I and friends use the cabin annually each summer. We have consistently endeavored to preserve the natural beauty and ecology of the area in which the cabin is located. It is a unique and beautiful site in a pristine forest and lake environment. We treasure our cabin and view it as a part of our heritage. We also value our right to our summer experiences as they have been afforded to us by the Congress in the recreation residence authorizing Act of 1915. However, for a number of years we have felt threatened by proposals, actions, and indicators of actions by the Forest Service which have appeared to us to be efforts to discourage enjoyment of our cabin.

I have read the current proposed legislation (S. 1938) which appears to me to provide a needed level of guidance to the Forest Service in the matter of cabin use fees. As is true of most cabin owners, I have heard and read numerous "horror" stories about fee increases that are inconsistent with the reality of our use of the National Forest Land for recreation residences. I would like to describe some of the aspects of cabin use which offset in a significant way the recognizably great benefits of having the right to use the cabin site. The factors I mention are applicable to the site we occupy.

There is no road to the cabin. An access road ends a quarter mile away. We walk and use row boats to access the cabin. The cabin is small--below minimum size standards for residences within the county in which it is located. There are no public utilities and the cabin cannot be enlarged under the policy structure that exists. We have built or fashioned essential water systems and remove our trash by carrying it out. Because of weather variations, reliable summer occupancy is limited to less than three months in any year. Occupying the cabin differs greatly from resort experiences in which services and recreational facilities are established through investment action. Our support for "The Cabin User Fee Fairness Act," S. 1938, arises from our belief that the Forest Service tends to disregard the realities of our use of the land, and our reservations regarding Forest Service intentions in developing regulations, directives, and fee schedules.

I hope the committee will support enactment of this bill.

Sincerely,



Stanley N. Sherman

Testimony of Ted L. Glaub, President, American Society of Farm Managers and Rural Appraisers

Hearing on Cabin User Fee Fairness Act of 1999

March 23, 2000

ASFMRA Background

Thank you for the opportunity to submit testimony on behalf of The American Society of Farm Managers & Rural Appraisers (ASFMRA) for this very important hearing. The ASFMRA is the oldest non-profit association of appraisers in the United States. Established in 1929, our membership is comprised of farm management and rural appraisal professionals from thirty-six chapters throughout North America. We are recognized as the leader in rural, farm, ranch, and specialized resource property valuation with over 25 million acres appraised annually by our membership.

Summary

ASFMRA is a proponent of sound appraisal practice. Sound credible appraisals require the appraiser to find and use the most reliable data available when valuing properties. As a non-profit appraisal organization, we are not concerned with fee amounts charged for the use of cabin sites. We advocate maintaining a responsible appraisal process and caution against repercussions of erroneous appraisals.

The ASFMRA is currently working with all interested parties to ensure that The Cabin User Fee Fairness Act of 1999 is in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), enacted in accordance with the Financial Institutions Reform, Recovery and Enforcement Act passed by Congress in 1989. The bill would require that appraisals comply with the Uniform Appraisal Standards for Federal and Acquisitions ("UASFLA"), which parallels USPAP in most areas; however, there are some sections in the bill that are in direct conflict.

ASFMRA remains optimistic that we will be able to work with the Subcommittee to address our concerns but believe it is incumbent upon our association to report our genuine concern over the following sections of The Cabin User Fee Fairness Act of 1999 in their current form:

Section 6 (b) (1) (B) ii states:

"The appraiser shall not appraise the typical lot as being equivalent to a legally subdivided lot."

Under current law, the appraiser must make appropriate adjustments to sales. The fact is, small, as-if subdivided lots are generally the most comparable property type for use in valuing these properties. It is the appraiser's responsibility to find the most reliable and most comparable sales

and then make appropriate adjustments. Not having the ability to utilize the best data may well result in a misleading appraisal.

Section 6 (b) (2) requires appraisers to prioritize three categories, without consideration of the individuality of each sale, for analysis of comparable land sales.

Nearly all of the leases in question are small properties and located in areas near other properties with similar uses. The UASFLA requires the test to be "Market Value", which is well defined, with reference to the subject properties' Highest & Best Use. The appraiser should not be directed to a value by a requirement to use non-comparable sales, a practice that the provisions in this bill will require. The appraisal assignment problem is generally to value "a typical lot", not the valuation of the larger area of the cabin site area. Requiring the use of larger comparable properties will generally result in lower unit values, rather than accurate unit values.

Section 6 (b) (3) requires appraisers to make an exception for certain sales of land by dismissing factors including urban growth boundaries or conservation and recreational designations. It is the appraiser's responsibility to find and use the most reliable data and then make appropriate adjustments. Not having the ability to utilize the best data may well result in a misleading appraisal.

These are some examples from the bill that may lead to appraisals that do not reflect "market value" as it is defined by USPAP and UASFLA. Appraisers who comply with these provisions may be considered in violation of the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisition.

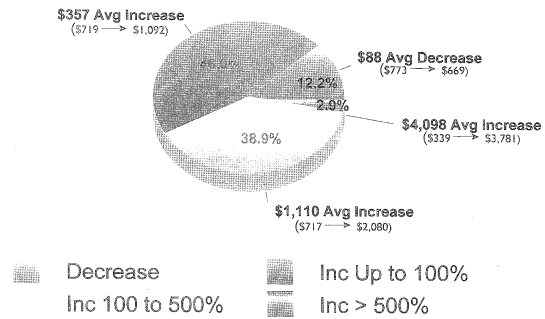
#### Congressional Action

In 1989, Congress passed legislation, which mandated that appraisals performed in conjunction with federally related financial transactions be those promulgated by the Appraisal Standards Board of the Appraisal Foundation. In addition, Congress directed that state certified real estate appraisers must meet the education, experience and examination requirements established by the Appraisal Qualifications Board of The Appraisal Foundation. In order to ensure ongoing public accountability of The Appraisal Foundation, Congress created the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) to monitor its activities. If there is a perceived need to have the requirements of Forest Service cabin lease valuation reviewed, The Appraisal Foundation is the logical reviewing authority.

#### Conclusion

The ASFMRA's main concern is maintaining a sound appraisal process, which is not compromised or manipulated to force values that have a specific intended result. We remain committed to working with all interested parties to resolve our concerns with this bill. We would also like to reiterate that the fee amount for using cabin sites on national forests is of no consequence to professional appraisers. Maintaining the appraisal process and its integrity is very much our concern.

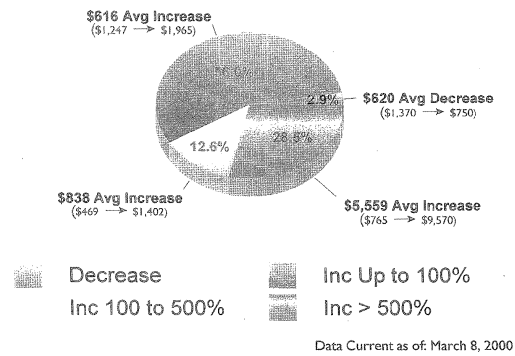
Comparison of 20-Year Old Appraisals (with IPD indexing)  
And Current Appraisals  
**National Summary Including Sawtooth NRA**  
9,599 Cabins Appraised (63% of the Total)



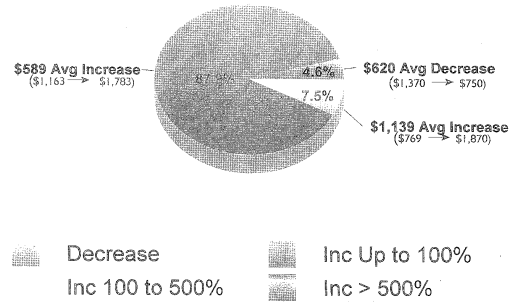
Data Current as of: March 8, 2000



Comparison of 20-Year Old Appraisals (with IPD indexing)  
And Current Appraisals  
**All Idaho Recreation Residences**

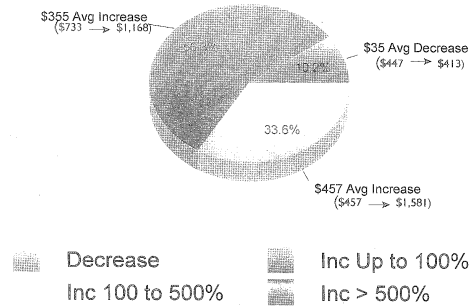


Comparison of 20-Year Old Appraisals (with IPD indexing)  
And Current Appraisals  
Idaho (without Sawtooth NRA)



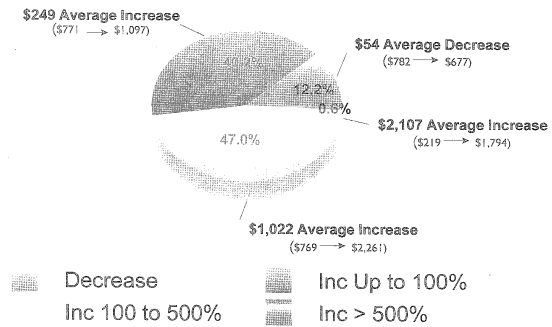
Data Current as of: March 8, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing)  
And Current Appraisals  
**Nevada Recreation Residences**



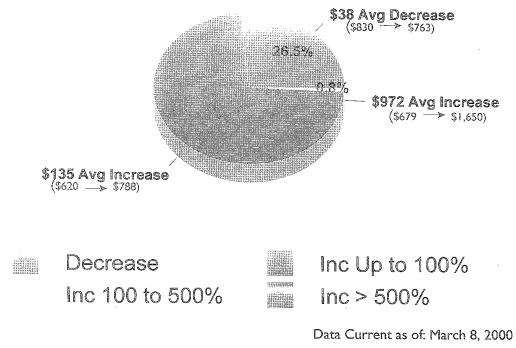
Data Current as of: March 8, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing)  
And Current Appraisals  
**California Recreation Residences**

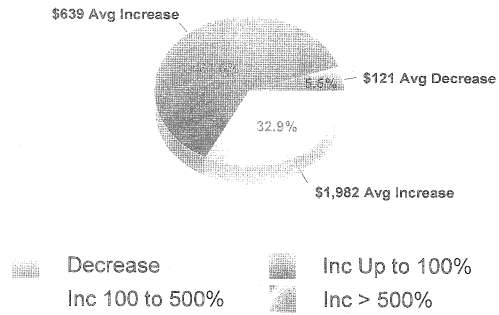


Data Current as of: March 6, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing)  
And Current Appraisals  
**Washington Recreation Residences**

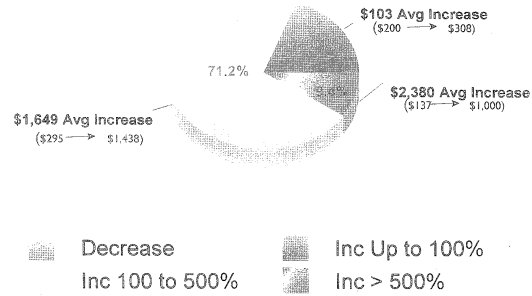


Comparison of 20-Year Old Appraisals (with IPD indexing)  
And Current Appraisals  
**Montana Recreation Residences**



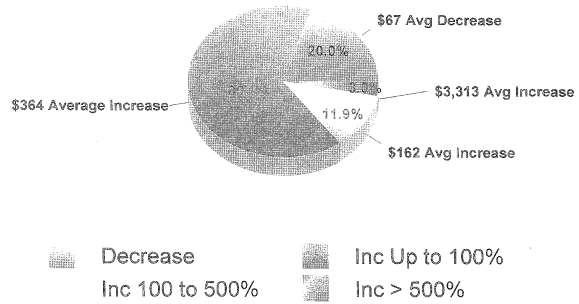
Data Current as of: March 25, 1999

Comparison of 20-Year Old Appraisals (with IPD indexing)  
And Current Appraisals  
**Michigan Recreation Residences**



Data Current as of: March 8, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing)  
And Current Appraisals  
**Colorado Recreation Residences**



Data Current as of January 8, 1999



sent by: OFFICE MAX;

208/358877;

Mar-19-00 10:23AM;

Page 1



United States  
Department of  
Agriculture

Forest  
Service

Sawtooth  
National  
Forest

2647 Kimberly Road East  
Twin Falls, ID 83301-7978  
Telephone: (208) 737-3200

9-15-1994 = 22m

Reply to: 2720

Date: September 15, 1994

David R. Mead  
2045 Hillcrest Drive  
Twin Falls, ID 83301

CERTIFIED MAIL-RETURN RECEIPT  
REQUESTED P 391 370 086

Ref: "Term Bridge  
Cabin -  
Valley View  
Permit"

Dear Mr. Mead:

In early June, our Washington Office sent you a copy of the June 2 Federal Register Notice of the Forest Service's revised policy for administering recreation residence permits on the National Forests. The policy revision was necessary as a result of an administrative appeal of the policy we adopted in August 1988. That appeal decision determined that certain parts of the 1988 policy exceeded the authority given to the Forest Service by law and regulation and were therefore, void. This also voided certain terms in your special use permit since they were based on the policy. You were advised of the voided clauses in the spring of 1989, or, if you acquired your cabin after February 1989, the permit you received lacked the flawed clauses.

Now that the revised policy is final, we must make appropriate revisions to your permit. Please attach the enclosed revised standard terms and conditions to your current permit. We have prepared these revisions in the form of a complete permit with the replacement clauses underlined for your convenience. We assure you that the revisions are confined to those necessary to comply with the revised policy. The revised clauses are found in Sections VI.C.2, VII.C, IX.A, B, and C, and X.A and B. There are also minor single-word, editing changes to bring your permit up-to-date with current law and regulation. For example, the word "lot" is substituted for the word "site" when referring to the permitted area.

Please note that the replacement clauses concern the renewal, revocation, and termination of the permit. They describe the procedures the Forest Service must follow if recreation residence use were to be discontinued. The clauses state our obligations to you. Since there are no clauses governing these areas in your current permit, we are certain you will welcome the assurances that the revised terms and conditions provide.

Replacement of terms and conditions is a decision subject to administrative appeal pursuant to Secretary of Agriculture Appeal Regulations 36 Code of Federal Regulations 251, Subpart C. Any appeal must be in writing, be fully consistent with 36 CFR 251.90, "Content of Notice of Appeal" including the reasons for appeal, and must be filed within 45 days from the date of this letter. The Chief of the Forest Service is the Authorized Officer for this action. Thus, an appeal must be addressed to the U.S. Department of Agriculture, James R. Lyons, Assistant Secretary for Natural Resources and Environment, Room 217-E, Administration Building, Washington, D.C. 20250. Simultaneously send a copy of the Notice of Appeal to: Chief, USDA Forest Service, P.O. Box 20090-6090. The phrase "Forest Service Recreation Residence Appeal" should be placed on the front of the envelope.



Sent By: OFFICE MAA;

208/358877;

Mar-19-00 10:23AM;

Page 2



If you have questions or concerns about these revisions to your permit, please discuss them with us. We are available to help you understand the revisions to the policy and to your permit. Please contact Lee Smith at our Twin Falls office for assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. E. Bills".

JACK E. BILLS  
Forest Supervisor

Sawtooth National Forest, Idaho

Enclosure



Sent By: OFFICE MAX;

208/358877;

Mar-19-00 10:23AM;

Page 3

REPLACEMENT TERMS AND CONDITIONS FOR PARTS I - XI. FS-2700-5a (01/94)  
 FOR EXISTING TERM PERMIT ISSUED ON 01/23/89 OMB No. 0596-0082  
 Expires 06/30/96

USDA - Forest Service  TERM SPECIAL USE PERMIT For Recreation Residences  Act of March 4, 1915, As Amended (Ref. FSM 2710)	Holder No.	Type Site	Authority
	Auth. Type	Issue Date	Expir. Date
	Location Sequence No.		Stat. Ref.
	Latitude	Longitude	LOS Case
	43-56-77	114-57-53	

David R. Nead

of 2045 Hillcrest Drive

(Holder Name)

(Billing Address - 1)

Twin Falls

ID

83301

(hereafter called the holder) is hereby authorized to use National Forest lands, for a recreation residence for personal recreational use on the Sawtooth National Forest, subject to the provisions of this permit including items 1 through 11, on page(s) 2 through 7. This permit covers 1/2 acres.

Described as: (1) Lot 27 of the Valley View Summer tract.  
 (A plat of which is on file in the office of the Forest Supervisor.)

OR

(2) TWIN RIVE Sec-7 P.M. as shown on the attached map.  
 (Legal Description)

The following improvements, whether on or off the lot, are authorized in addition to the residence structure:

This use shall be exercised at least 15 days each year, unless otherwise authorized in writing. It shall not be used as a full-time residence to the exclusion of a home elsewhere.

THIS PERMIT IS NOT TRANSFERABLE  
 PURCHASERS OF IMPROVEMENTS ON SITES AUTHORIZED BY THIS PERMIT MUST SECURE A NEW PERMIT FROM THE FOREST SERVICE.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS.

ACCEPTED:

HOLDER'S NAME AND SIGNATURE

DATE

APPROVED:

AUTHORIZED OFFICER'S NAME AND SIGNATURE

TITLE

DATE

## TERMS AND CONDITIONS

## I. AUTHORITY AND USE AND TERM AUTHORIZED.

A. This permit is issued under the authority of the Act of March 4, 1913, as amended (16 U.S.C. 437), and Title 36, Code of Federal Regulations, Sections 251.50-251.64. Implementing Forest Service policies are found in the Forest Service Directives System (FSM 1920, 1950, 2340, 2720; FSR 2709.11, Chap. 10-50). Copies of the applicable regulations and policies will be made available to the holder at no charge upon request made to the office of the Forest Supervisor.

B. The authorized officer under this permit is the Forest Supervisor, or a delegated subordinate officer.

C. This permit authorizes only personal recreation use of a noncommercial nature by the holder, members of the holder's immediate family, and guests. Use of the permitted improvements as a principal place of residence is prohibited and shall be grounds for revocation of this permit.

D. Unless specifically provided as an added provision to this permit, this authorization is for site occupancy and does not provide for the furnishing of structures, road maintenance, water, fire protection, or any other such service by a Government agency, utility association, or individual.

E. Termination at End of Term: This authorization will terminate on December 31, 2008.

## II. OPERATION AND MAINTENANCE.

A. The authorized officer, after consulting with the holder, will prepare an operation and maintenance plan which shall be deemed a part of this permit. The plan will be reviewed annually and updated as deemed necessary by the authorized officer and will cover requirements for at least the following subjects:

1. Maintenance of vegetation, tree planting, and removal of dangerous trees and other unsafe conditions.
2. Maintenance of the facilities.
3. Size, placement and descriptions of signs.
4. Removal of garbage or trash.
5. Fire protection.
6. Identification of the person responsible for implementing the provisions of the plan, if other than the holder, and a list of names, addresses, and phone numbers of persons to contact in the event of an emergency.

NOTE: Forest Supervisors may include other provisions relating to fencing, road maintenance, boat docks, piers, boat launching ramp, water system, sewage system, incidental rental, and the Forest Association. Regional Foresters may add specific provisions that Forest Supervisors should include in the plan.

## III. IMPROVEMENTS.

A. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named on the face of this permit or approved in writing by the authorized officer in the operation and maintenance plan. Improvements requiring specific approval shall include, but are not limited to: signs, fences, name plates, mailboxes, newspaper boxes, bathhouses, decks, pipelines, antennas, and storage sheds.

B. All plans for development, layout, construction, reconstruction or alteration of improvements on the lot, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual.

acceptable to the authorized officer. Such plans must be approved by the authorized officer before the commencement of any work.

#### IV. RESPONSIBILITIES OF HOLDER.

A. The holder, in exercising the privileges granted by this permit, shall comply with all present and future regulations of the Secretary of Agriculture and all present and future federal, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. However, the Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.

B. The holder shall exercise diligence in preventing damage to the land and property of the United States. The holder shall abide by all restrictions on fires which may be in effect within the forest at any time and take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during a closed fire season established by law or regulation without written permission from the authorized officer.

C. The holder shall protect the scenic and esthetic values of the National Forest System lands as far as possible consistent with the authorized use, during construction, operation, and maintenance of the improvements.

D. No soil, trees, or other vegetation may be removed from the National Forest System lands without prior permission from the authorized officer. Permission shall be granted specifically, or in the context of the operations and maintenance plan for the permit.

E. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damage, other than ordinary wear and tear, to National Forest lands, roads and trails caused by the holder's activities.

F. The holder assumes all risk of loss to the improvements resulting from acts of God or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees and other hazardous natural events. In the event the improvements authorized by this permit are destroyed or substantially damaged by acts of God or catastrophic events, the authorized officer will conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis will be provided to the holder within 6 months of the event.

G. The holder has the responsibility of inspecting the site, authorized rights-of-way, and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and/or pose a risk of injury to individuals. After securing permission from the authorized officer, the holder shall remove such hazards.

H. In case of change of permanent address or change in ownership of the recreation residence, the holder shall immediately notify the authorized officer.

#### V. LIABILITIES.

A. This permit is subject to all valid existing rights and claims outstanding in third parties. The United States is not liable to the holder for the exercise of any such right or claim.

B. The holder shall hold harmless the United States from any liability from damage to life or property arising from the holder's occupancy or use of National Forest lands under this permit.

C. The holder shall be liable for any damage suffered by the United States resulting from or related to use of this permit, including damages to National Forest resources and costs of fire suppression. Without limiting available

civil and criminal remedies which may be available to the United States, all timber cut, destroyed, or injured without authorization shall be paid for at stumpage rates which apply to the unauthorized cutting of timber in the State wherein the timber is located.

#### VI. FEES.

A. Fee Requirement: This special use authorization shall require payment in advance of an annual rental fee.

##### B. Appraisals:

1. Appraisals to ascertain the fair market value of the lot will be conducted by the Forest Service at least every 20 years. The next appraisal will be implemented in 1998 (insert year).

2. Appraisals will be conducted and reviewed in a manner consistent with the Uniform Standards of Professional Appraisal Practice, from which the appraisal standards have been developed, giving accurate and careful consideration to all market forces and factors which tend to influence the value of the lot.

3. If dissatisfied with an appraisal utilized by the Forest Service in ascertaining the permit fee, the holder may employ another qualified appraiser at the holder's expense. The authorized officer will give full and complete consideration to both appraisals provided the holder's appraisal meets Forest Service standards. If the two appraisals disagree in value by more than 10 percent, the two appraisers will be asked to try and reconcile or reduce their differences. If the appraisers cannot agree, the Authorized Officer will utilize either or both appraisals to determine the fee. When requested by the holder, a third appraisal may be obtained with the cost shared equally by the holder and the Forest Service. This third appraisal must meet the same standards of the first and second appraisals and may or may not be accepted by the authorized officer.

##### C. Fee Determination:

1. The annual rental fee shall be determined by appraisal and other sound business management principles. (36 CFR 231.57(a)). The fee shall be 5 percent of the appraised fair market fee simple value of the lot for recreation residence use. \*

Fees will be predicated on an appraisal of the lot as a base value, and that value will be adjusted in following years by utilizing the percent of change in the Implicit Price Deflator - Gross National Product (IPD-GNP) index as of the previous June 30. A fee from a prior year will be adjusted upward or downward, as the case may be, by the percentage change in the IPD-GNP, except that the maximum annual fee adjustment shall be 10 percent when the IPD-GNP index exceeds 10 percent in any one year with the amount in excess of 10 percent carried forward to the next succeeding year where the IPD-GNP index is less than 10 percent. The base rate from which the fee is adjusted will be changed with each new appraisal of the lot, at least every 20 years.

2. If the holder has received notification that a new permit will not be issued following expiration of this permit, the annual fee in the tenth year will be taken as the base, and the fee each year during the last 10-year period will be one-tenth of the base multiplied by the number of years then remaining on the permit. If a new term permit should later be issued, the holder shall pay the United States the total amount of fees foregone, for the most recent 10-year period in which the holder has been advised that a new permit will not be issued. This amount may be paid in equal annual installments over a 10-year period in addition to those fees for existing permits. Such amounts owing will run with the property and will be charged to any subsequent purchaser of the improvements.

D. Initial Fee: The initial fee may be based on an approved Forest Service appraisal existing at the time of this permit, with the present day value calculated by applying the IPD-GNP index to the intervening years.

E. Payment Schedule: Based on the criteria stated herein, the initial payment is set at \$ 309.93 per year and the fee is due and payable annually on January 1 (insert date). Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments or fee calculation statements fall on a nonworkday, the charges shall not apply until the close of business of the next workday. Any payments not received within 30 days of the due date shall be delinquent.

F. Interest and Penalties:

1. A fee owed the United States which is delinquent will be assessed interest based on the most current rate prescribed by the United States Department of Treasury Financial Manual (TFM-6-8020). Interest shall accrue on the delinquent fee from the date the fee payment was due and shall remain fixed during the duration of the indebtedness.

2. In addition to interest, certain processing, handling, and administrative costs will be assessed on delinquent accounts and added to the amounts due.

3. A penalty of 6 percent per year shall be assessed on any indebtedness owing for more than 90 days. This penalty charge will not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

4. When a delinquent account is partially paid or made in installments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

G. Nonpayment Constitutes Breach: Failure of the holder to make the annual payment, penalty, interest, or any other charges when due shall be grounds for termination of this authorization. However, no permit will be terminated for nonpayment of any monies owed the United States unless payment of such monies is more than 90 days in arrears.

H. Applicable Law: Delinquent fees and other charges shall be subject to all the rights and remedies afforded the United States pursuant to federal law and implementing regulations. (31 U.S.C. 3711 et seq.).

VII. TRANSFER, SALE, AND RENTAL.

A. Nontransferability: Except as provided in this section, this permit is not transferable.

B. Transferability Upon Death of the Holder:

1. If the holder of this permit is a married couple and one spouse dies, this permit will continue in force, without amendment or revision, in the name of the surviving spouse.

2. If the holder of this permit is an individual who dies during the term of this permit and there is no surviving spouse, an annual renewable permit will be issued, upon request, to the executor or administrator of the holder's estate. Upon settlement of the estate, a new permit incorporating current Forest Service policies and procedures will be issued for the remainder of the deceased holder's term to the properly designated heir(s) as shown by an order of a court, bill of sale, or other evidence to be the owner of the improvements.

C. Divestiture of Ownership: If the holder through voluntary sale, transfer, enforcement of contract, foreclosure, or other legal proceeding shall cease to be the owner of the physical improvements, this permit shall be terminated. If the person to whom title to said improvements is transferred is deemed by the authorizing officer to be qualified as a holder, then such person

to whom title has been transferred will be granted a new permit. Each new permit will be for the remainder of the term of the original holder.

D. Notice to Prospective Purchasers: When considering a voluntary sale of the recreation residence, the holder shall provide a copy of this special use permit to the prospective purchaser before finalizing the sale. The holder cannot make binding representations to the purchaser as to whether the Forest Service will reauthorize the occupancy.

E. Rental: The holder may rent or sublet the use of improvements covered under this permit only with the express written permission of the authorized officer. In the event of an authorized rental or sublet, the holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet. See

#### VIII. REVOCAION

A. Revocation for Cause: This permit may be revoked for cause by the authorized officer upon breach of any of the terms and conditions of this permit or applicable law. Prior to such revocation for cause, the holder shall be given notice and provided a reasonable time--not to exceed ninety (90) days--within which to correct the breach.

B. Revocation in the Public Interest During the Permit Term:

1. This permit may be revoked during its term at the discretion of the authorized officer for reasons in the public interest. (36 CFR 251.60(b)). In the event of such revocation in the public interest, the holder shall be given one hundred and eighty (180) days prior written notice to vacate the premises, provided that the authorized officer may prescribe a date for a shorter period in which to vacate ("prescribed vacancy date") if the public interest objective reasonably requires the lot in a shorter period of time.

2. The Forest Service and the holder agree that in the event of a revocation in the public interest, the holder shall be paid damages. Revocation in the public interest and payment of damages is subject to the availability of funds or appropriations.

a. Damages in the event of a public interest revocation shall be the lesser amount of either (1) the cost of relocation of the approved improvements to another lot which may be authorized for residential occupancy (but not including the costs of damages incidental to the relocation which are caused by the negligence of the holder or a third party), or (2) the replacement costs of the approved improvements as of the date of revocation. Replacement cost shall be determined by the Forest Service utilizing standard appraisal procedures giving full consideration to the improvement's condition, remaining economic life and location, and shall be the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised using modern materials and current standards, design and layout as of the date of revocation. If revocation in the public interest occurs after the holder has received notification that a new permit will not be issued following expiration of the current permit, then the amount of damages shall be adjusted as of the date of revocation by multiplying the replacement cost by a fraction which has as the numerator the number of full months remaining to the term of the permit prior to revocation (measured from the date of the notice of revocation) and as the denominator, the total number of months in the original term of the permit.

b. The amount of the damages determined in accordance with paragraph a. above shall be fixed by mutual agreement between the authorized officer and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: Provided, That if mutual agreement is not reached, the authorized officer shall determine the amount and if the holder is dissatisfied with the amount to be paid may appeal the determination in accordance with the Appeal Regulations (36 CFR 251.62) and the amount as determined on appeal shall be final and conclusive on the parties.



hereto: Provided further, That upon the payment to the holder of the amount fixed by the authorized officer, the right of the Forest Service to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

#### IX. ISSUANCE OF A NEW PERMIT.

A. Decisions to issue a new permit or convert the permitted area to an alternative public use upon termination of this permit require a determination of consistency with the Forest Land and Resource Management Plan (Forest plan)

1. Where continued use is consistent with the Forest plan, the authorized officer shall issue a new permit, in accordance with applicable requirements for environmental documentation.

2. If, as a result of an amendment or revision of the Forest plan, the permitted area is within an area allocated to an alternative public use, the authorized officer shall conduct a site specific project analysis to determine the range and intensity of the alternative public use.

a. If the project analysis results in a finding that the use of the lot for a recreation residence may continue, the holder shall be notified in writing, this permit shall be modified as necessary, and a new term permit shall be issued following expiration of the current permit.

b. If the project analysis results in a decision that the lot shall be converted to an alternative public use, the holder shall be notified in writing and given at least 10 years continued occupancy. The holder shall be given a copy of the project analysis, environmental documentation, and decision document.

c. A decision resulting from a project analysis shall be reviewed two years prior to permit expiration, when that decision and supporting environmental documentation is more than 5 years old. If this review indicates that the conditions resulting in the decision are unchanged, then the decision may be implemented. If this review indicates that conditions have changed, a new project analysis shall be made to determine the proper action.

B. In issuing a new permit, the authorized officer shall include terms, conditions, and special stipulations that reflect new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions. (36 CFR 251.64)

C. If the 10-year continued occupancy given a holder who receives notification that a new permit will not be issued would extend beyond the expiration date of the current permit, a new term permit shall be issued for the remaining portion of the 10-year period.

#### X. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR NOTIFICATION THAT A NEW PERMIT WILL NOT BE ISSUED FOLLOWING TERMINATION OF THIS PERMIT.

A. Removal of Improvements Upon Revocation or Notification That A New Permit Will Not Be Issued Following Termination Of This Permit: At the end of the term of occupancy authorized by this permit, or upon abandonment, or revocation for cause, Act of God, catastrophic event, or in the public interest, the holder shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall return the lot to a condition approved by the authorized officer unless otherwise agreed to in writing or in this permit. If the holder fails to remove all such structures or improvements within a reasonable period--not to exceed one hundred and eighty (180) days from the date the authorization of

occupancy is ended--the improvements shall become the property of the United States, but in such event, the holder remains obligated and liable for the cost of their removal and the restoration of the lot.

B. In case of revocation or notification that a new permit will not be issued following termination of this permit, except if revocation is for cause, the authorized officer may offer an in-lieu lot to the permit holder for building or relocation of improvements. Such lots will be nonconflicting locations within the National Forest containing the residence being terminated or under notification that a new permit will not be issued or at nonconflicting locations in adjacent National Forests. Any in-lieu lot offered the holder must be accepted within 90 days of the offer or within 90 days of the final disposition of an appeal on the revocation or notification that a new permit will not be issued under the Secretary of Agriculture's administrative appeal regulations, whichever is later, or this opportunity will terminate.

#### XI. MISCELLANEOUS PROVISIONS.

A. This permit replaces a special use permit issued to:

David R. Mead on March 12, 1979.

B. The Forest Service reserves the right to enter upon the property to inspect for compliance with the terms of this permit. Reports on inspection for compliance will be furnished to the holder.

C. Issuance of this permit shall not be construed as an admission by the Government as to the title to any improvements. The Government disclaims any liability for the issuance of any permit in the event of disputed title.

D. If there is a conflict between the foregoing standard printed clauses and any special clauses added to the permit, the standard printed clauses shall control.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OTRM, Room 404-W, Washington D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0596-0082), Washington, D.C. 20503.

to whom title has been transferred will be granted a new permit. Such new permit will be for the remainder of the term of the original holder.

D. Notice to Prospective Purchasers: When considering a voluntary sale of the recreation residence, the holder shall provide a copy of this special use permit to the prospective purchaser before finalizing the sale. The holder cannot make binding representations to the purchasers as to whether the Forest Service will reauthorize the occupancy.

E. Rental: The holder may rent or sublet the use of improvements covered under this permit only with the express written permission of the authorized officer. In the event of an authorized rental or sublet, the holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet. See

#### VIII. REVOCATION

A. Revocation for Cause: This permit may be revoked for cause by the authorized officer upon breach of any of the terms and conditions of this permit or applicable law. Prior to such revocation for cause, the holder shall be given notice and provided a reasonable time--not to exceed ninety (90) days--in which to correct the breach.

B. Revocation in the Public Interest During the Permit Term:

1. This permit may be revoked during its term at the discretion of the authorized officer for reasons in the public interest. (36 CFR 251.60(b)). In the event of such revocation in the public interest, the holder shall be given one hundred and eighty (180) days prior written notice to vacate the premises, provided that the authorized officer may prescribe a date for a shorter period in which to vacate ("prescribed vacancy date") if the public interest objective reasonably requires the lot in a shorter period of time.

2. The Forest Service and the holder agree that in the event of a revocation in the public interest, the holder shall be paid damages. Revocation in the public interest and payment of damages is subject to the availability of funds or appropriations.

a. Damages in the event of a public interest revocation shall be the lesser amount of either (1) the cost of relocation of the approved improvements to another lot which may be authorized for residential occupancy (but not including the costs of damages incidental to the relocation which are caused by the negligence of the holder or a third party), or (2) the replacement costs of the approved improvements as of the date of revocation. Replacement cost shall be determined by the Forest Service utilizing standard appraisal procedures giving full consideration to the improvement's condition, remaining economic life and location, and shall be the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised using modern materials and current standards, design and layout as of the date of revocation. If revocation in the public interest occurs after the holder has received notification that a new permit will not be issued following expiration of the current permit, then the amount of damages shall be adjusted as of the date of revocation by multiplying the replacement cost by a fraction which has as the numerator the number of full months remaining to the term of the permit prior to revocation (measured from the date of the notice of revocation) and as the denominator, the total number of months in the original term of the permit.

b. The amount of the damages determined in accordance with paragraph a. above shall be fixed by mutual agreement between the authorized officer and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: Provided, That if mutual agreement is not reached, the authorized officer shall determine the amount and if the holder is dissatisfied with the amount to be paid may appeal the determination in accordance with the Appeal Regulations (36 CFR 251.80) and the amount as determined on appeal shall be final and conclusive on the parties

SAWTOOTH NATIONAL RECREATION AREA  
RECREATION RESIDENCE  
 OPERATION AND MAINTENANCE PLAN

The following Operation and Maintenance Plan is made a part of the Holder's permit as provided in Clause II of the special use permit.

I. STRUCTURES

- A. The maximum size of any cabin is 1200 sq. ft. This includes second floor footage. Simple and rustic designs for all cabins and outbuildings are preferred. Bathroom additions will normally be approved. Sewage disposal proposals must be accompanied by a State of Idaho permit.
- B. Colors will be natural, blending into surroundings. Approved paint samples are available at the NRA Headquarters.
- C. Colored metal roofs are okay. Dark brown is preferred. We have not yet found a satisfactory dark green metal color.
- D. Asphalt shingles can be dark brown, dark green or slate gray.
- E. Cedar shakes and wood shingles can be left natural colored or colored dark brown, dark green, or slate gray.
- F. We will authorize one pit toilet and one storage outbuilding per site. Storage building = 120 sq. ft. maximum. Pit toilet must be at least 300' from live or intermittent stream. Additional structures will not normally be approved.
- \* G. All new electrical installations WILL BE UNDERGROUND!
- H. Outdoor high intensity lights operated on an automatic timer are not permitted.
- I. Attached decks will normally be authorized if reasonable in size. Ten to twelve feet maximum width should suffice.
- J. Hot tubs are not encouraged because of draining concerns. What happens to the water?
- K. Satellite dishes will not normally be authorized.
- L. Sleeping cabins will not be authorized unless constructed prior to 1988. There will be an additional fee for each sleeping cabin authorized.
- M. Garages will not normally be authorized.
- N. Fences are not authorized.

- O. Pole gates may be authorized to restrict traffic into your lot. These should be constructed of two posts and a pole cross bar with reflectors. NO CABLE GATES ARE AUTHORIZED BECAUSE OF THE LIABILITY PROBLEMS WE HAVE ENCOUNTERED. IF YOU HAVE A CABLE GATE. PLAN TO REMOVE IT AS SOON AS POSSIBLE AND REPLACE WITH A WOODEN POLE GATE!
- P. Signs may be placed at entrance roads to direct visitors to your cabin. All signs should be no more than 12" by 24" (roughly), rustic in appearance, naturally colored, preferably routed, AND NOT NAILED TO TREES! They may be erected to a post.
- Q. Play houses, teepees, tree houses, etc. are not authorized. There are plenty of neat things for kids to do without needing these additional structures.
- R. For the present, boat docks are permitted at Pettit Lake. They will be authorized by a separate special use permit with a separate annual fee.

Existing Dock Standards

Max Length	35'
Max Width	8'
Max Ht. from water surface	37"

New Dock Standards

Max Length	30'
Max Width	6'
Max Ht. from water surface	18"

All docks will be straight-line ("|" shaped). Docks not meeting standards will not be authorized by special use permit and will have to be removed. NO MORE THAN ONE DOCK PER RECREATION RESIDENCE LOT WILL BE AUTHORIZED.

Bright colored indoor-outdoor rugs on docks are not acceptable.

All modifications to existing docks and all new construction of docks must be approved by the Forest Service in advance. All proposed construction, remodeling, color changes, installations, etc. must be approved by the Forest Service prior to beginning work.

## II. DRINKING WATER

- A. We encourage the installation of wells. State of Idaho permits must be obtained prior to drilling.
- B. We must approve all proposed well locations.
- C. The Forest Service will file on all well and spring developments on National Forest lands.

- D. Spring developments will normally be authorized by a separate special use permit. Contact Forest Service for additional details

### III. LAWNS

Lawns are discouraged at recreation residence. Cabins should be maintained in as near to a natural setting as possible. Effective firebreaks can usually be maintained utilizing native vegetation.

### IV. TREE TRANSPLANTING

In no lot is there a tree that will last forever. Human impacts are often preventing the success of natural regeneration around your cabins. In order to assure a forested setting for your "later years," for your children, grandchildren, and generally for all others who may pass this way, we encourage you to annually transplant (water and fertilize) a few native trees from the forest to your lot. There is no charge for these transplants and no permit is required provided you do not leave the forest with the trees. Best survival rates seem to occur in the early spring (April to mid-May). Several cabins that have begun transplanting small (1'-3') trees. We salute your efforts!

### V. TREE AND VEGETATION REMOVAL TO IMPROVE VIEWS

- A. We normally frown on these efforts, although there may be instances where some tree cutting may actually improve the overall condition of the forest. Contact us before attempting, please!
- B. Lakeshore and streamside hacking or cutting of vegetation is not acceptable. These water's-edge communities are important elements of the forest and should be maintained in as near-to-natural a condition as possible.

### VI. HORSES

Horses are not permitted inside summer home areas. If you have horses, please keep them in corrals at Alturas Lake Creek, Cabin Creek, or Russian John. Contact the Forest Service before using the Russian John corral. Feed must be supplied by you at each site.

### VII. LOT MAINTENANCE

- A. The permitted area will be maintained to present a clean, neat and orderly appearance. Trash, debris, unusable machinery, improvements, etc., will be disposed of currently.

- B. The lot will not be used to store building materials in excess of those needed for approved remodel or repair.
- C. No motorhomes, trailers, boats or other items will be stored on the lot.
- D. Loop driveways are discouraged because of additional impacts to the Forest.

## VIII. SERVICES

A. Garbage

1. What are you going to do with all you normal household garbage? How about those remodel projects and the construction debris? DO NOT DUMP ANYTHING IN OUR CAMPGROUND OR PICNIC SITE DUMPSTERS. YOU HAVE NOT PAID FOR THAT PRIVILEGE. These are maintained for campground and day use visitors ONLY!
2. As a summer home group, you may want to rent a dumpster from Wood River Rubbish (in Ketchum) and place it within the summer home area for your needs. Our campground trash hauling contract has been with Wood River Rubbish for several years so your cost should be reduced since they will be in the area dumping our dumpsters twice a week during the summer.
3. There may be an opportunity to cost/share maintenance of dumpsters near your summer home area with the Forest Service. Opportunities may exist at Pettit Lake, Alturas, and Easley areas. Contact us for more details.
4. Pettit and Valleyview permittees can use the Blaine County-maintained dumpsters located across Highway 75 from Smiley Creek Lodge. The Forest Service will not provide dumpsters at any summer home area for permittee use.
5. The Blaine County Landfill is located east of Highway 75 about seven miles south of Ketchum.

B. Road Maintenance

1. Your special use permit fee pays for the use of your lot only. It does not pay for any other services (no garbage hauling, no road maintenance, no free wood cutting rights, etc.)

2. If your summer home tract or organization desires more frequent road maintenance than what is presently being provided by us (which in some cases is quite infrequent), then you can deposit funds in a Forest Service coop account specifically for increased road maintenance. We encourage you to do so. Some of you have elected to do this where our maintenance has been rare or non-existent. Please contact the Forest Service if you are interested.

C. Firewood Cutting

3. You may cut dead trees on you lot without a firewood permit as long as the wood remains on your lot to be used in your cabin.
4. If you cut wood on National Forest lands away from your cabin lot, then you must have a firewood permit, regardless of where you are hauling the wood.
5. If you haul wood on any state, county, or forest roads, you must display firewood tags on the back of your load.

IX. FIRE PROTECTION

- A. No fireworks shall be stored or used on the land covered by this permit or in the structures thereon.
- B. Fireplaces and all wood burning appliances will be equipped with spark screens.
- C. The roof shall be kept reasonably clear of leaves, twigs, and other debris.
- D. The Holder shall clear and keep cleared from any structures all readily burnable vegetation such as dry grass, forest needles, and dead vegetation.
- E. The use of firearms within a summer home area is prohibited.
- F. The Forest Service will respond to structure fires on National Forest lands during summer months, but only to keep the fire from spreading.

X. USE OF FACILITIES

- A. The Holder may rent his improvements with prior Forest Service approval. Such rental must be incidental to the Holder's use, be for recreational purposes and will not exceed a time limit specified by the Forest Service. The Holder understands that responsibility for compliance with the terms of the permit will remain with the Holder.



- B. Upon placing the cabin on the market for sale the Holder will notify the Forest Service.
- C. Upon listing the cabin for sale, a sign may be placed next to the cabin or at the driveway entrance to the cabin.
- D. The Forest Service will not normally approve snow plowing Forest Service roads. If plowing is desired the Holder will contact the Forest Service for review and possible approval of a snow plowing permit.

XI. RESPONSIBLE PERSON(S), OTHER CONTRAC(S), AND OTHER OWNER(S)

- A. The name, address, and phone number of the person responsible for implementing the provisions of the plan, if other than the Holder, will be provided to the Forest Service by the Holder.
- B. The Holder should provide the Forest Service with a list of names, addresses, and phone numbers of persons to contact in the event of an emergency.
- C. Names, addresses, and phone numbers of any coowners should also be provided to the Forest Service by the Holder.

**TABLE OF EXHIBITS**

Exhibit A: Joint Statement by former members of the Chief's Committee.  
less Appendix (copy of applicable Federal Policy, already  
cited above).

## JOINT STATEMENT

by

Charles S. Cushman, Robert E. Ervin & William B. Worden

Past members of the "Chief's Committee"

concerning

CONGRESSIONAL TESTIMONY BY THE U.S. FOREST SERVICE  
IN CONNECTION WITH RECREATION RESIDENCE FEE DETERMINATION  
May 11, 1999

### SUMMARY AND OUTLINE OF CONTENT.

#### *I. Introduction.*

The undersigned have been involved with the Forest Service on recreation residence matters since the early 1980's. We were members of the "Chief's Committee" which developed the 1988 fee and tenure policy. The fee policies established then are not working. The Agency has changed the package that permittee representatives agreed to. In defending its fee system, the Agency has given inaccurate testimony and created misperceptions that need to be clarified.

*II. Agency testimony has suggested that permit holders and their organizations concurred with the fee system now being implemented. This is not correct. The current system is not the one to which we agreed.*

1. The Permittee Representatives accepted a compromise package that the Agency unilaterally changed afterward.
2. Severe restrictions that apply to recreation residence permits, as distinct from private ownership, are not being taken into account as anticipated.
3. The Agency testified that the 5% capitalization rate was determined after consultation with permittees. However, it has consistently told permittees this rate is a precedent of many years standing. We were given no choice but to accept it. The Agency's inability to objectively justify this rate or its derivation belies the claim that its fee system produces a "fair market value" result.
4. Agency testimony disclaimed responsibility for adopting the 20-year appraisal interval, suggesting instead that the permittee organizations had advocated it. This was an Agency decision, originated by Agency staff.
5. The Agency also testified that permittees chose the IPD inflation index because it would result in a lower fee. This is not correct. At the time, it was not possible to accurately forecast whether the IPD or the CPI would increase the least. The IPD was adopted because it had a less volatile history, and because its appeared less susceptible to the vagaries of labor-management relations and retirement issues.
6. The plain language of the policy and permit reflects and supports our expectation that adjustment for use restrictions would be included in the appraisal process.

**EXHIBIT A**

Joint Statement, May 10, 1999 - page 2

7. The Agency restructured part of its definition of what is to be appraised.
8. Permit holder representatives believed their members would be protected by the right to appeal and to obtain second and third appraisals. Due to Agency re-interpretations, these expectations have not been realized.
9. The Agency testified that Recreation residences are a "private, privileged" use of National Forest lands, and also included such language in the appraisal instructions. Further, it implied that Cabins are equivalent to second homes. The first contradicts previous assurances given permittee organizations, while the second is not accurate. Both inferences seem curious when considered alongside other unilateral revisions and reinterpretations described in this paper.
10. The Agency also misleadingly suggested that a large majority of individual permittees approved the system. In truth, they had little choice in the matter.

*III. Other Agency Implications and Testimony Have Been Unsupported, Arguable or Misleading.*

1. "High and rising valuations are due to high demand for use of forest lands." *They are also caused by reduced supply, impacts of high value but unrelated uses, "project influence", and other actions of the Agency, all of which have the effect of promoting scarcity and allowing the Agency to profit from fee increases caused by its own decisions.*
2. "The Forest Service granted permits to only about 18,000 cabin owners." *The Agency earlier told us that more than 20,000 were originally granted.*
3. "The Agency is obligated by law to base fees only on "fair market value". *It has failed to substantiate this claim, or to show that "value of use", established by the Independent Offices Appropriations Act, has been superseded by law.*
4. "The present fee system correctly and equitably measures fair market value." *The logic of the Agency's arguments, taken together, is insupportable. In too many cases, inequity and unfairness have been observed.*
5. "The Agency is exploring alternative land price indexes for improved accuracy". *We are aware of no such index being publicly available. It would not be appropriate or cost effective for the Agency to develop its own private index*
6. "A television news report and a GAO report support the new fee system". *More accurately, both supported a conclusion that the system is not working.*
7. "The cost of this appraisal cycle will be \$30 million. " *This figure was later reduced to \$5 million, with little justification.*

Joint Statement, May 10, 1999 - page 3

#### *IV. Conclusion.*

Further examination of these issues will be found throughout the remainder of this paper. A better fee determination method could be developed that is fair, equitable, less controversial, and far less costly to the government and taxpayer. However, the Agency has not been cooperative. It continues to insist that its failing system is the only acceptable alternative. Accordingly, we have recommended that our respective organizations pursue a political solution to this issue.

#### *V. Appendix.*

This section contains applicable provisions of Agency fee policies, procedures, and the special use permit.

---

#### **I. INTRODUCTION.**

In the mid-1980's the methods used by the U.S. Forest Service to manage recreation residences and to determine their fees came under heavy criticism. As a result, Forest Service Chief Max Peterson established a Forest Service/Permittee group known then as the "Chief's Committee", to discuss and seek possible solutions to this vexing problem. That group met in Washington, DC a number of times over a period of about two years.

The undersigned are the only former permit holder representatives and members of that group remaining in leadership positions of the national and state permittee organizations. None of the Forest Service leaders who participated in these discussions (two Chiefs, two Lands Directors, and two Assistant Lands Directors) remain in the Service.

Fee policies established when the group's work was completed are now being tested by actual implementation of the appraisal process for the first time since adoption. Controversy has erupted once more. The Congress has heard testimony on five occasions, three in Washington DC and two in the field:

October 23, 1997: Washington, DC	Subcommittee on Forests and Forest Health, Committee on Resources, United States House of Representatives.
February 16, 1998: Twin Falls, ID	Subcommittee on Forests and Public Lands Management, Energy and Natural Resources Committee, United States Senate.
February 21, 1998: Coeur d'Alene, ID	Subcommittee on Forests and Forest Health, Committee on Resources, U.S. House of Representatives.
June 8, 1998: Washington, DC	Committee on Agriculture, United States House of Representatives.

Joint Statement, May 10, 1999 - page 4

October 1, 1998: Subcommittee on Forests and Public Lands Management,  
Washington, DC Energy and Natural Resources Committee, United States  
Senate.

At these hearings, leaders of recreation residence organizations and others have presented testimony suggesting the Forest Service fee system is flawed. In its rebuttals, the Forest Service has testified its system is required by law, and have suggested that permittees at the time of the policy's adoption were in agreement with it. That undoubtedly refers specifically to the "Chief's Committee", and to input received by the Forest Service from the organizations represented thereon.

The permittee members of that committee did accept policies we understood were being adopted at that time, and which continue to be reflected by the language of the current policy and permit. However, certain aspects of the system, as now being implemented, are not what we earlier understood them to be, nor are they what we believe the applicable current policy and permit language requires.

For the information of readers, we have reproduced in the Appendix hereto the Policy and Procedure rules, and the language of the Special Use Permit, as they pertain to fees, both of which were published by the Agency in the Federal Register June 2, 1994.

Numerous claims, statements and implications promulgated by Agency representatives at the above Committee and Subcommittee hearings have been incorrect, distorted or misleading. It is the purpose of this Joint Statement to correct misperceptions being promulgated by those without direct knowledge of the earlier proceedings.

## II. THE AGENCY TESTIFIED THAT PERMIT HOLDERS AND THEIR ORGANIZATIONS CONCURRED WITH THE FEE SYSTEM NOW BEING IMPLEMENTED.

*Summary Response:* This is not correct. The current system is not the one to which we agreed. The Agency significantly modified the understandings reached with permittees. The package accepted was changed by withdrawal and revision of its tenure provisions, and by unilateral revision or re-interpretation of its fee provisions.

The Chief's Committee approved of some but not all the permit fee provisions that were adopted in 1988, and republished in similar form in 1994. However, actual implementation of these provisions during the past several years has demonstrated uneven and erroneous results, and in a significant number of cases has not been carried out in accordance with the understandings reached with the Chief's Committee in 1988. The Agency appears to have revised, reinterpreted or added to a number of the provisions.

Joint Statement, May 10, 1999 - page 5

*Topical Responses:*

1. The permittee representatives accepted a compromise package that the Agency unilaterally changed afterward.

Permittee members of the Chief's Committee asked for a number of reforms that related to both fee and tenure issues. Some were adopted, and some were not. Our general approval was a compromise related to the package as a whole, not to every specific item it contained. Furthermore, the agreed policy upon appeal was later sent back to the Agency for additional consideration. The tenure provisions of the resulting package were materially revised and less favorable than those in the package approved by permittee representatives in 1988, while the fee portion was left substantially unchanged.

*The permittees did not agree to the present fee system, as their assent related to the entire package. The 1994 revision materially changed the terms of the earlier compromise upon which permittee approval was based.*

2. The severe restrictions applying to recreation residence permits, as distinct from private ownership, are not being taken into account as anticipated.

a. The members of the Chief's Committee believed the limited rights granted by the permit, and the unusually heavy restrictions it places on exercising the use, were to be reflected in the appraisal by adjusting for differences in the rights and restrictions applying to cabin lots and the rights and restrictions applying to comparable private lots. The Agency changed its position and now insists that appraisers are **not** to adjust for **any** such differences, as they are **all** reflected by the 5% "discount rate". We believe our understanding at the time of approval was justified by the Committee discussions, and continues justified by the language of the currently effective policy and permit.

b. We had no choice of whether to adopt or revise the 5% figure. Exactly what it represented was not a significant issue discussed in our deliberations. Mention was made of its long-standing historical precedent, and that it was a "below market rate" we believed was intended to adjust for the difference in the general character of private as opposed to permitted land. We understood that most specific differences would be recognized in the appraisal process, and certainly did not interpret the discussions to mean that no such differences would be considered.

*The permittees did not approve a system that excluded consideration in the appraisal of all differences in rights and restrictions, and included them only in the 5% discount factor.*

Joint Statement, May 10, 1999 - page 6

3. The Agency testified that the 5% capitalization rate was determined after many years of consultation and collaboration with permittees.

There was no consultation or collaboration in the ordinary sense. We were given no choice. As related in numerous conversations with Forest Service officials, the 5% convention has been in effect for a very long time, perhaps over 100 years. None of the officials, however, were able to explain its rationale or its derivation. It is an arbitrary convention justified only by past usage. Believing that differences in rights and restrictions would be reflected by the appraisals, not having a measurable basis for suggesting a different number, and having been given no choice in the matter, we did not oppose the *fait accompli*. [See Federal Register Vol. 56, No. 197 / Thursday, October 10, 1991, p51270, 3. Five Percent Factor: "This factor has been used by the Forest Service for many years ..... it is part of Agency Policy at FSM 2715.11 ....."] Agency representatives have admitted privately they cannot explain derivation of the 5%, or how in fact it actually reflects or measures the minimal rights and heavy restrictions of the permit. The revised Agency interpretation of the "5% rule" effectively eliminates from consideration a significant variable affecting value. At the same time, the Agency opposes all attempts to rectify the inequitable and unfair results of its fee system, or to resolve the impasse its revised position on the 5% rule has created.

*It is difficult to reconcile the Agency's inability to provide objective justification for use of the 5% discount rate with the concurrent claim that its use produces a "fair market value" result.*

4. Agency testimony disclaimed responsibility for adopting the 20-year appraisal interval, suggesting instead that the permittees had advocated it.

As we understood it, the 20-year interval between appraisal cycles was proposed and selected by the Agency staff, presumably to reduce anticipated high costs of conducting appraisals under new and more demanding requirements. Some permittee members of the chief's Committee were concerned about the potential consequences of this decision, due to the undue importance it placed on the year the appraisals were done, and the inequities that might develop and compound over such a long period.

*The policy was proposed, advocated and adopted by the Agency, which should accept responsibility for it.*

5. The Agency's testimony suggested that permittees chose the IPD inflation index because it would result in a lower fee.

This is not an accurate representation of our position. The only potential choice other than the IPD was the CPI. The Agency could not find and did not suggest other alternatives. It was not possible to accurately forecast which of the two would increase the least. Both permittees and the Agency believed the IPD was a reasonable alternative because it seemed less volatile over short time periods, and therefore might be expected to reduce potential inequities between fees determined in different years.



Joint Statement, May 10, 1999 - page 7

Further, as it was derived by dividing one gross GNP number by another, it was felt less susceptible to the politics of labor-management relations and retirement issues.

*The Agency itself agreed with this viewpoint, and it made the decision to adopt this alternative.*

6. The plain language of the policy and permit reflects and supports our expectation that adjustment for use restrictions would be included in the appraisal process.

This understanding was and continues to be reflected by the published text of the 1994 policy as reproduced in the attached Appendix.

a. FSM 2721.23d directs that fair market value as determined by appraisal, using professional appraisal standards, will be used in determining the base fee. FSH 2709.11, 33.3 directs appraisers to value the fee simple estate of the land underlying subject lot, "but without consideration as to how the authorization [permit] would or could affect the fee title of the lot". It further directs that appraised values of subject lots be reflective of their characteristics, which include among other factors, legal constraints imposed by governmental agencies, usability and utility of the lot, and other market forces and factors having a quantifiable effect on value.

b. The standard permit, Sec. VI B, requires appraisals to be conducted and reviewed in a manner consistent with the Uniform Standards of Professional Appraisal Practice, giving accurate and careful consideration to all market forces and factors which tend to influence the value of the lot. Section IV C requires that the fee be determined by appraisal and other sound business management principles.

c. The policy and permit language support our understanding that, while the appraised value might not be lowered by reason of the basic status of a cabin site as permitted land rather than fee simple land, nevertheless specific permit rights and restrictions would be considered within the appraisal process itself by measuring them against those applying to comparable private sites. Surely, consideration of such differences is required by standard professional appraisal practices; by the need to consider all market forces and factors which tend to influence value; by the requirement to reflect characteristics such as legal constraints imposed by governmental agencies, usability and utility, and other market factors having an effect on value; and by sound business management principles.

*Our understanding of what was agreed is supported by the plain language of the policy and permit, notwithstanding subsequent Agency revisions and reinterpretations.*

7. The Agency restructured parts of its definition of the estate to be appraised.

a. *Site vs. Lot.* The word "Site" in the 1988 policy and permit as presented to the Chief's Committee was changed in the 1994 revision to the word "Lot". We see now that the Agency is requiring appraisers to use the concept of "lot" when comparing with private property subdivisions, but continues to require use of the "site" concept when

Joint Statement, May 11, 1999 - page 8

instructing appraisers that lot size does not matter in the appraisal valuation. The fact is that permittees are not allowed full use of their "lot" - only the cabin footprint, or the lockable portion of the improvements. "Site" more accurately describes this circumstance. Nevertheless, value comparisons are being made with private property where the public is not entitled to use any part of the "lot". We do not recall the effects of this change on appraisals being discussed prior to adoption.

*b. Inclusion of Non-Permitted Land in the Appraisal.* We understand the Agency now claims that "national direction" requires national forest land outside of an authorized lot to be appraised as part of that lot if it is occupied by permittee improvements.

i. We recall no such provision being discussed by the Chief's Committee, nor do we find any such provision in the policy or permit adopted in either 1988 or 1994. The Agency should provide a citation for this rule, and the history and authority for its adoption.

ii. Permittee improvements are specifically excluded from appraisal. This new rule has the effect of covertly including some of them. Further, many of the improvements cited are trivial items such as "walkways, stairs, and tables". The result is assessment of increased fees based on technicality.

iii. Agency policy requires issuance of a separate and distinct permit for each off-site improvement. If the Agency neglects to issue such a permit, that is its own omission. If the Agency had intended to collect a fee for such improvements, it should have issued the requisite permit (the fee basis for which would not necessarily be the same as for a recreation residence).

iv. The Agency maintains that fees are not based on site size, which is a logical contradiction of this rule.

*c. Recreation Residence Fees are "Fair Market Rental Fees".*

The term "Annual Rental Fee" was introduced in the final language of the 1994 Policy and Permit revisions. It was not used during discussions with the Chief's Committee. Now the Agency has introduced the term "fair market rental fees" in Congressional testimony, although the language does not appear either in the policy or permit. This characterization is inaccurate, although it clearly will affect public perceptions. The term "rental" is ordinarily applied to short term commitments to occupy homes and apartments rented by private landlords who own both land and improvements. When the term is a year or more, accepted business practice refers to the contract as a "lease", and the tenant makes "lease payments". The accurate terms are "permit fee" or "user charges".

*The above illustrate additional modifications of the package made later by the Agency without knowledge of the permittee organizations or members of the Chief's Committee.*

Joint Statement, May 10, 1999 - page 9

8. During the 1988 discussions, members of the Chief's Committee believed permit holders would be protected against appraisal errors and inequitable fees by their right to appeal fee determinations, and to obtain additional appraisals.

a. The Agency now interprets its regulations to mean the appraisal is not appealable according to normal administrative appeal regulations. Only the fee is appealable. The fee is established and announced by the authorized officer after consideration of the appraisal. If the fee is not announced, no appeal may be made. The only recourse is to spend large sums on a new appraisal or appraisals that must be conducted using the same faulty methodology as the first. If this process is not followed, it is likely the deciding officer would deny any appeal of the fee on the grounds the permittee had not exhausted his remedies. From a practical standpoint, this situation effectively amends the Agency's Appeal Regulations by raising a barrier not many permittees are likely to surmount.

b. The Agency also claims authority to announce and impose a fee based on the initial appraisal, even though further appraisals are to be conducted. In this case, appeal could be made, but would lack any evidence a subsequent appraisal might uncover. The right of appeal is thereby further impaired. The practice of premature fee announcement and application is contrary to our earlier understanding and to the apparent intent of the policy language.

*The right of appeal was re-interpreted so that for practical purposes it was nearly eliminated, while the value of additional appraisals has been compromised. We had assumed, based on our meetings and the policy and permit language, that the right of appeal was unimpaired and that the language and sequence of FSH 2709.11, 33.32, and permit Sec. VI B 3 (see Appendix), meant that the appraisal process, including second and third appraisals, would run its course before a fee was announced and implemented. Here are two additional examples of re-interpretations made after approval of the 1988 policy and permit.*

9. The Agency recently testified that recreation residences are a "private, privileged" use of National Forest lands. Such language was also inserted in the appraisal instructions. The testimony also alluded to cabins as "second homes".

The "private, privileged" usage contradicts clear assurances made to permittees on many occasions, including discussions leading to adoption of the 1988 and 1994 policies. The vast majority of cabins are not at all equivalent to second homes, nor does this portrayal describe the purpose of the Agency's recreation residence program.

The characterization of recreation residences as a "private, privileged use" was contained in written policy prior to the 1988 revision, and was responsible for the perception of many permittees that Agency policy was to eliminate recreation residences from the National Forests. The Agency vigorously denied these allegations. As a result of discussions within the Chief's Committee, such misleading language was entirely eliminated and no longer appears either in the policy or permit. Current

Joint Statement, May 10, 1999 - page 10

references to this archaic formulation are undocumented and unsupported in any written Agency policy. Further, nowhere does policy refer to "second homes". Unfortunately, such terms are sometimes used in error, or by those with a hidden agenda.

Cabin owners, their families, and others who use recreation residences are members of the public. Their forest use is no more "private" than that of members of other segments of the public who use the forests for recreation. The only portion of a cabin site not by law and regulation accessible to all members of the public is the lockable footprint of the structure, which of course is owned by the permittee, contains his personal property, and must be locked for security reasons.

The purpose of the Agency recreation residence program was and remains to provide forest recreation opportunities to individuals, friends and families beyond those kinds of experiences available to day users. The vast majority of permittees use them in that manner. They are not intended to be vacation hideaways for the rich and famous.

*Recently, in testimony and official appraisal instructions, these inaccurate characterizations have been resurrected without basis in policy. This seems a curious development when viewed along with other unilateral revisions and re-interpretations described in this paper, which support a fee system that is raising fees by up to 100% to 300% or more, and promises to at least double Agency revenues.*

10. The Agency testified that a large majority of individual permit holders also expressed approval of the system.

The several organizations involved on the Chief's Committee had previously solicited public comments to the Agency that strongly opposed various earlier proposals. Upon accepting the package of revised policies, these same organizations solicited positive comments as a demonstration to the Agency of their good faith in supporting the understandings reached.

*The only reason such a large number of favorable comments were received is that the organizations believed (in retrospect, perhaps mistakenly) that it was favorable, and they solicited favorable comments in support of the Agency.*

**CONCLUSION ON SECTION II: AGENCY TESTIMONY THAT PERMIT HOLDERS AND THEIR ORGANIZATIONS CONCURRED WITH THE CURRENT FEE SYSTEM NOW BEING IMPLEMENTED.**

Based on the above review, it is clear (1) that full communication with permittee members of the Chiefs Committee was lacking, and (2) that significant provisions of the policy and permit were revised, re-interpreted or otherwise later adopted without announcement or publication. The contention is not warranted that if the fee system adopted in 1988 appeared fair at that time, it is fair now.

Joint Statement, May 10, 1999 - page 11

*It is misleading to claim that permittee organizations or the individual permittees themselves approved of the fee system now being implemented by the Agency. If the Agency revised or reinterpreted in the policy and permit (which is a contract with the permittee), it was obligated to publish the proposed changes and take public comment, just as it was required to provide due process in developing its recreation residence policy initially. The Agency has no right to unilaterally revise the contract in this manner without public participation. In connection with these issues and others raised by this statement, the Agency should provide relevant citations from and explanations of policy, permit and "national direction" that show how it reaches its conclusions based on the 1988 and 1994 policy and permit language, at what point the revisions or reinterpretations were made, and/or citations of relevant directives or rules that may have been adopted after 1994.*

---

### III. OTHER AGENCY IMPLICATIONS AND TESTIMONY HAVE BEEN UNSUPPORTED, ARGUABLE OR MISLEADING.

*Summary Response:* The inaccuracies described above suggest that other Agency testimony and representations should be carefully reviewed.

#### 1. Claim: High and rising valuations are caused by growing demand for use of forest lands.

*Response:* (a) It is true that land use and valuations in general have increased. However, an additional very significant factor not mentioned is that (i) the Federal and other governmental bodies own a very large proportion of the land in these areas, and (ii) such governmental agencies continue to acquire more such land. Market price is dependent on both supply and demand. While demand may be increasing, a large part of the value increase in many areas is due to restricted and diminishing supply. Governments are contributing to the land shortage which causes a rise in price of the reduced supply of private land. Based on the price increase, Governments are then profiting from the higher revenues caused by their own monopolistic actions.

(b) The effect of diminishing supply is exacerbated by land prices in certain very profitable recreation nodes such as destination resorts and ski areas, the influence of which radiates outward, although having little to do with the purposes and uses of recreation residences. "Project Influence" and other consequences of Agency actions also must be taken into account. Failure to recognize these effects appears to be a common factor among numerous appraisals reported thus far.

*These issues require more than passing attention if the Agency wishes to fairly value recreation residence sites in accordance with law and acceptable valuation practices. They also suggest that reasonable alternatives to the current Agency philosophy of "whatever the market will bear" should be explored.*

Joint Statement, May 10, 1999 - page 12

2. Claim: The Forest Service granted permits to only 18,000 cabin owners, and the vast majority of the subsequent reduction to 15,200 was due to land exchange.

*Response:* Conversations with the Forest Service over many years indicated about 15,200 cabins remaining out of more than 20,000 that once existed. This 25% reduction appears to signify approximately 5,000 cabins terminated or otherwise removed from the system. We have never before heard the 18,000 figure. Over time, we have witnessed many actual and attempted terminations by the Agency, especially during the 1960's and 1970's. However, we believe few cabins have been terminated since the tenure provisions of the 1988 policy went into effect.

*Such past and present variations suggest statements like the above are based on very soft numbers. Aside from land exchanges, we believe the number of cabins terminated for other reasons was quite significant, not minimal as represented. Furthermore, the present fee system, if continued in its present form, could force a significant number of average families to sell their cabins, and ultimately may result in further attrition of cabin sites and substantial reduction in overall recreation residence use.*

3. Claim: The Agency is obligated by law to base fees only on "fair market value".

*Response:* The Independent Office Appropriations Act (31 U.S.C. 9701) requires fees to be fair and to be based on cost to the Government, value to the recipient, public policy, and other relevant facts. It was cited by the GAO on page 4 of the 1996 report discussed below as being "the primary authority for permit fees". Since the Act refers to "value of the service or thing to the recipient", and not to "fair market value", we are at a loss to understand how Agency testimony can cite it as requiring fair market value methodology. "Value of use" is not the same thing as "fair market value", which appears to be a subsequent administrative overlay. Agency testimony also cites the Federal Land Policy and Management Act (43 U.S.C. 1761-1771) as precedent for its position. Yet it quotes Sec. 102(a)(9) of that law as declaring fair market value to be required "unless otherwise provided by statute". It seems that 31 U.S.C. 9701 should qualify as a preceding statute that provides otherwise. The Agency's testimony has failed to cite any legislative authority that would supersede 31 U.S.C. 9701 or invalidate its provisions, yet the Agency continues to argue that FMV is required by legislation.

*The Agency should clearly cite such claimed obligatory legislation, show how it modifies or supersedes 31 U.S.C. 9701, and to what effect, and demonstrate that its current fee system complies with the requirements put forward in the legislation cited.*

Joint Statement, May 10, 1999 - page 13

4. Claim: Taken together, the Agency's positions are that its current fee system correctly and equitably measures fair market value, and is the only legal or acceptable methodology. This amounts to making the following argument:

*"Fees representative of 'fair market value' [which is 'required'] can be correctly determined for a [unique kind of property] only by applying a fixed and arbitrary percentage [of obscure origin and rationale] to an appraisal amount [determined in an unusual manner under conditions which have no counterpart in normal private appraisal methodology]."*

*Response:* It is difficult to accept such an argument at face value. The modifiers in brackets illustrate fatal weaknesses. The percentage is arbitrary with no rational justification by the Agency other than as a precedent with unknown origin. The appraisal omits significant market factors that if included would materially affect value. The estate to be appraised is unique. Comparable private properties do not exist. Even though professional appraisers and appraisal standards are required, the appraisers are required to follow the "system". But that system is unique and has no counterpart elsewhere in the world of property valuation.

*Other practical and less expensive ways to determine fair and equitable fees are available. Contrary to the Agency's claim, evidence is mounting that the current appraisal system can, and does in a significant number of cases, lead to incorrect valuations and to inequitable and unfair fees.*

5. Claim: The Agency apparently believes itself qualified to develop a proprietary land value index, which would accurately reflect local and regional land values.

*Response:* No such index is publicly available. It would be very expensive and costly for the Agency to develop its own private index of outlying residential land suitable for cabin valuation purposes.

*Such authority also would be equivalent to allowing the fox to guard the hen house.*

6. Claim: The Agency appeared to imply that a television news report and a GAO report were supportive of its new fee system.

*Response:* Perhaps the bias is sufficiently illustrated by simply reproducing the titles of these reports as entered by the Agency into the record: "The Fleecing of America" and "Fees for Recreation Special-Use Permits do not Reflect Fair Market Value".

The sensationalized and superficial nature of the short NBC Nightly News segment speaks for itself and needs no rebuttal.

The December, 1996 GAO report extrapolated from hearsay and only five unrepresentative samples. On the surface, it appeared to reach a generalized conclusion that recreation residence fees were too low. In fact, it examined only waterfront properties, and "verified" its conclusions by talking with the Agency and

Joint Statement, May 10, 1999 - page 14

examining county assessments, which it nevertheless admits are unreliable measures of value, and which the Agency in the early 1980's refused to consider for its own fee setting purposes.

Here are a few direct quotes from the GAO report:

"Two major factors contribute to the agency's problems .... lack of priority given to the program by agency management and the lack of incentives to correct known problems."

"After timber sales, the special-use program is the second largest generator of revenue for the Forest Service."

"While our sample [five lots] may not be representative of all recreation residences [underlining ours], the results indicated that during this time period the implicit price deflator did not result in fee adjustments that kept pace with changes in land values ...."

".... Forest Service officials told us that .... [the results of our sample were] probably indicative of the situation that exists for most lots having waterfront access .... "

".... regarding nonwaterfront lots the Chief Appraiser .... [said that for upcoming appraisals] .... the value and fees for most nonwaterfront lots will rise but not increase appreciably .... "

"We recommend .... [the Forest Service] .... update the methods used to calculate fees for .... special use permits so they better reflect fair market value and comply with the requirements of the Independent Offices Appropriations Act of 1952 [underlining ours] and OMB Circular A-25.

*We agree that the recreation residence fee system needs improvement to comply with the Independent Offices Appropriations Act. However, the problem runs much deeper than waterfront lot valuation. Note the main thrust of the report is that 20 year intervals are not frequent enough to allow adequate inflation updating, and that the IPD did not properly reflect waterfront lot value increases. Little evidence was presented to show the GAO undervaluation conclusions apply to other than waterfront locations. The Chief Appraiser incorrectly expected such values not to increase appreciably. In addition, the 1978-82 appraisals themselves were not questioned. Finally, we note that the special-use program, after timber, is the largest generator of revenues to the Agency. Left unsaid was that cabins, even without fee increases, are already by far the largest revenue generator of all recreation uses on a per-acre basis.*

7. Claim: The Appraisals will cost the Agency \$ 30 million (or perhaps \$ 5 million).

*Response:* The Agency testified several times and reported to permittee organizations that the total cost of this appraisal cycle would be approximately \$30 million. However, after having been being pointedly asked how many sites would be appraised for this amount, the Agency in its October 1, 1998 testimony changed this position. It stated



Joint Statement, May 10, 1999 - page 14

examining county assessments, which it nevertheless admits are unreliable measures of value, and which the Agency in the early 1980's refused to consider for its own fee setting purposes.

Here are a few direct quotes from the GAO report:

"Two major factors contribute to the agency's problems .... lack of priority given to the program by agency management and the lack of incentives to correct known problems."

"After timber sales, the special-use program is the second largest generator of revenue for the Forest Service."

"While our sample [five lots] may not be representative of all recreation residences [underlining ours], the results indicated that during this time period the implicit price deflator did not result in fee adjustments that kept pace with changes in land values ...."

".... Forest Service officials told us that .... [the results of our sample were] probably indicative of the situation that exists for most lots having waterfront access .... "

".... regarding nonwaterfront lots the Chief Appraiser .... [said that for upcoming appraisals] .... the value and fees for most nonwaterfront lots will rise but not increase appreciably .... "

"We recommend .... [the Forest Service] .... update the methods used to calculate fees for .... special use permits so they better reflect fair market value and comply with the requirements of the Independent Offices Appropriations Act of 1952 [underlining ours] and OMB Circular A-25.

*We agree that the recreation residence fee system needs improvement to comply with the Independent Offices Appropriations Act. However, the problem runs much deeper than waterfront lot valuation. Note the main thrust of the report is that 20 year intervals are not frequent enough to allow adequate inflation updating, and that the IPD did not properly reflect waterfront lot value increases. Little evidence was presented to show the GAO undervaluation conclusions apply to other than waterfront locations. The Chief Appraiser incorrectly expected such values not to increase appreciably. In addition, the 1978-82 appraisals themselves were not questioned. Finally, we note that the special-use program, after timber, is the largest generator of revenues to the Agency. Left unsaid was that cabins, even without fee increases, are already by far the largest revenue generator of all recreation uses on a per-acre basis.*

7. Claim: The Appraisals will cost the Agency \$ 30 million (or perhaps \$ 5 million).

*Response:* The Agency testified several times and reported to permittee organizations that the total cost of this appraisal cycle would be approximately \$30 million. However, after having been being pointedly asked how many sites would be appraised for this amount, the Agency in its October 1, 1998 testimony changed this position. It stated

Joint Statement, May 11, 1999 - page 16

Finally, the Agency has restructured the system since the days of the Chief's Committee, often without proper notice. The product offered and accepted in 1988 included a number of desirable features that were not delivered, and it did **not** include a number of undesirable features that were disclosed only later. We believe it reasonable for permittees to ask for delivery of the product they were promised.

Despite all evidence to the contrary, the Agency continues unwilling to consider more than cosmetic changes in a system that clearly needs replacement or major surgery. Another fair and effective fee system could be devised which is simpler, less expensive, and less controversial. There have been many opportunities to fix these problems. The long term record of the Agency in this respect is not encouraging. For almost 20 years, to our own knowledge, the Agency has consistently fought every significant alternative and modification proposed, and it has brushed off every attempt to point out, and every suggestion to rectify, the shortcomings of its present high cost and inequitable system. Some of its testimony before Congress appears to have been less than candid. It is now clear that Congressional intervention is needed.

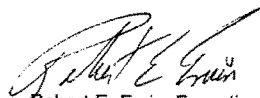
Accordingly, we have recommended that our organizations, together with others supporting them, vigorously pursue a reasonable political solution. We believe a fee system can be devised that reflects equity and the fair value of non-commercial cabin recreation use of the public lands, while at the same time providing a reasonable return to the United States. In contrast to the existing Agency fee system, we seek a system that is less complex, less expensive to administer, less controversial, and more logical and understandable to all concerned - in short, a system that will allow cabin ownership to continue making quality recreation experiences available to average families.

.Joint Statement, May 10, 1999 - page 17


Respectfully Submitted,



Charles S. Cushman, Executive Director  
American Land Rights Association



Robert E. Ervin, Executive Director  
National Forest Homeowners



William B. Worden, President  
California Forest Homeowners  
Past President, National Forest Homeowners

Distributed by the **CABIN FEE COALITION** A Liaison and Study Group of the American Land Rights Association, National Forest Homeowners Association, California Forest Homeowners Association, Oregon Forest Homeowners Association, Sawtooth Forest Cabin Owners Association-Idaho, and other supporting Cabin Associations.

SECTION C-2 SPECIFICATIONS FOR THE APPRAISAL OF RECREATION RESIDENCE SITES

SECTION C-2.1 - GENERAL SPECIFICATIONS

C-2.1(a) - Scope of Service. The contractor shall furnish all materials, supplies, tools, equipment, personnel, travel (except that furnished by the Government listed in Section I, and shall complete all requirements of this contract including performance of the professional appraisal services listed herein.

The project consists of one or more narrative appraisal reports which include all the recreation residence sites listed in Appendix A. The contractor may use her/his discretion in presentation of the market data and analysis. For example, it may be appropriate to include transaction data in one report and description/analysis of all the sites in one or more additional reports. Each appraisal report shall be furnished in an original and 2 copies. The appraisal shall provide an estimate of fair and equitable cash market value for a typical site, a site within a tract or group of tracts, as if in fee ownership and restricted to a recreation residence site use, excluding all permittee (hereafter called "holder") provided improvements on and to the site.

C-2.1(b) - Narrative Appraisal Report. The contractor shall make a detailed field inspection of the designated typical site(s) and all other listed sites within each recreation residence tract. The contractor must make investigations and studies as are appropriate and necessary to enable the contractor to derive sound conclusions in conformance with recognized appraisal standards; and shall prepare a written report.

The date of value in the appraisal shall not be more than 30 days from the last inspection of the typical sites(s), inspected by the contractor, if possible; but in no event, no later than 60 days.

C-2.1(c) - Meeting Notice. The contractor is obligated to provide recreation residence holders in a tract grouping a minimum of thirty (30) days of advance written notice of the site examination date. Notices shall be sent, certified mail, return receipt requested, to addresses furnished by the Forest Service, in Appendix A. Receipts shall be given to the contracting officer representative. The contractor shall give holders, holder representatives, and the Forest Service Sr. Review Appraiser the opportunity to meet with the contractor to discuss the assignment. The meeting shall be held at a location most convenient to the tract grouping and at a time when most affected holders could be expected to attend. This notice, and the responses thereto, shall be documented in the contractor's letter of transmittal of the appraisal report. The appraiser shall have available for review full and complete copies of all appraisal instructions, directions, and requirements at said meeting. The Forest Service will provide such copies.

C-2.1(d) - Updating of Report. Upon the request of the Forest Service, the contractor, during a 2-year period following the valuation date of the appraisal report, shall update the value as of a specified date. The updated report shall be submitted in original and 2 copies and include sales data or other evidence to substantiate the updated conclusion of value if a change in value occurs.

C-2.1(e) - Definition of Terms. All terms, words, and processes (unless specifically defined and given herein) shall have the meaning and be interpreted in accordance with the definitions of same as contained in the most recent edition of The Dictionary of Real Estate Appraisal published by the Appraisal Institute.

C-2.1(f) - Assignment of Specific Definitions:

(1) Permit - A permit is a special use authorization to occupy and use National Forest System land for a specified period and is revocable and compensable according to its terms.

(2) Recreation Residence - A privately owned, non-commercial principal structure, its auxiliary buildings, and land improvements located upon National Forest System lands as authorized under a permit issued by an authorized officer. The residence is maintained by the holder for the use and enjoyment of individuals, families, and guests. As a recreation facility, it is intended for use as a recreation residence for a minimum period each year, but not to the exclusion of a permanent residence elsewhere. ~~As~~ a private privilege use of National Forest System lands, the occupancy cannot interfere with public or semi-public uses having a documented higher priority.

(3) Site - The site is the actual physical area of National Forest System land as described in a permit, said land being in a natural, native state when the exclusive use was first permitted by an authorized officer.

(4) Tract - A tract is a logical grouping of recreation residences occupying an area of National Forest System land in a planned and/or approved manner similar to private-sector subdivisions. Typically located near scenic natural attractions (lakes, streams, mountains, scenic views, etc.), tracts are designed to be environmentally acceptable, compatible with the public interest, and to provide full public use and enjoyment of the natural attraction. Residences within a tract are subject to terms and conditions of individual permits issued. In general, permits within a tract grouping provide for similar privileges, restrictions, terms, and fees; and apply to land units having similar utility of physical, legal, economic, locational and functional characteristics.

SECTION C-2.2 - TECHNICAL SPECIFICATIONS

C-2.2(a) - Format. The report, in form and substance, must conform to recognized appraisal principles and practices applicable to estimating cash market value as outlined in the 1992 edition of Uniform Appraisal Standards for Federal Land Acquisitions, except as modified or amended herein. The appraisal report shall present and document adequate factual data and analysis to support any rate, ratio, percentage or dollar adjustment made to any comparable sale; as well as any other value information in sufficient detail to permit an intelligent peer review.

The report shall be typewritten on bond paper sized 8 1/2 by 11 inches with all parts of the report legible; shall be bound with a durable cover; and labeled on the face identifying the appraised property including contract number, appraiser's name and address, and the date of the appraisal. All pages of the report, including the exhibits, shall be numbered sequentially.

C-2.2(b) - Contents. The report shall be divided into tabulated parts of at least:

- PART I - INTRODUCTION
- PART II - FACTUAL DATA
- PART III - ANALYSES AND CONCLUSIONS
- PART IV - ADDENDA

The content of the report shall contain, as a minimum, the following:

C-2.2(b)(1) - PART I - INTRODUCTION

A. Title Page. This shall include (1) the name and location of the recreation residence tract; (2) that the appraisal is for the Forest Service-USDA; (3) name and address of the individual or firm making the appraisal; (4) date of value estimate; (5) the report date and appraiser's signature.

B. Table of Contents. This shall be arranged in accordance with the sequence of typical headings with corresponding page numbers.

C. Summary of Facts and Conclusions. This is a brief resume' of the essential highlights of the report. The purpose is to offer convenient reference to basic facts and conclusions. Items which shall be included are (1) name of recreation residence tract; (2) size range of sites; (3) authorized use which is highest and best use; (4) improvements furnished by Forest Service included in appraised value; (5) estimated value of each typical site.

D. Statement of Assumptions and Limiting Conditions

1. All holder-provided improvements on and to the land (site) have been identified in the body of this appraisal report, but have been fully excluded from the value conclusion cited herein.

2. The legal description cited herein was furnished by the Forest Service and is assumed correct.

3. The site(s) as appraised in this appraisal report were jointly selected by the Forest Service and the holders; and provided to the appraiser. The site(s) are assumed typical, unless noted and documented elsewhere in this appraisal report that, in the appraiser's opinion, the selected site(s) is not representative of the recreation residence tract grouping.

The Appraiser may add additional assumptions and limiting conditions as necessary so long as they do not limit the scope, function, or purpose of the appraisal report; and accurately reflect attitudes found in the real property market as well as the "Uniform Standards of Professional Appraisal Practice," as published by The Appraisal Foundation.

E. References. The contractor shall list the source of data incorporated within the report such as records, documents, technicians or other persons consulted, along with a statement of their qualifications and identification of the contribution to the report. To be included in the ADDENDA, such list shall contain the name, address, telephone, and date contacted for each person or organization from which the contractor obtained data included in the appraisal report.

C-2.2(b)(2) - PART II - FACTUAL DATA

A. Purpose of Appraisal. The appraisal purpose is a cash market value estimate of the fee simple interest of the National Forest System land underlying an area authorized by a permit, but without consideration as to how the permit would, or could, affect the fee title of the site(s) within a recreation residence tract, or the designated typical site(s) within a recreation residence tract grouping.

B. Definition of Market Value. The amount in cash or on terms reasonably equivalent to cash for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy. The value estimate must give accurate and careful consideration of all market forces and factors which tend to influence the value of property, and which bear on the most probable price in terms of money which the site should bring in a competitive and open market under all conditions requisite to a fair sale.

C. Estate Appraised is the unencumbered fee simple title of the typical site(s) as if held in private ownership, restricted to a recreation residence use, and subject to all applicable local governmental police powers. Federal government property is typically not impacted by non-Federal police powers such as zoning, building, health and land use codes, or development restrictions. Such use controls are a function of the permit in order to protect the public. Reconciliation of non-Federal police powers with permit restrictions of a like nature must be made.

Warranted adjustments for these matters external to the site(s), but influencing the sites(s), must be quantified and made in the appraisal. For the purpose of the appraisal, the site(s) shall be considered as in private ownership subject to the more stringent of applicable local police powers or permit restrictions of a like nature.

D. Area and Local Data. The report shall include a concise discussion of market area, trends in use, and neighborhood or area analysis. This type of information is usually background data leading to the appraiser's conclusion of the highest and best use. In this instance, the highest and best use is the authorized use which is a recreation residence site within the constraints of all known physical, legal, economic, locational, functional, and amenity characteristics of the site and the market in which it competes.

E. Property Data. Include a narrative description of the significant land features appraised. Briefly describe the recreation residence site tract and the group(s) within the tract, access, location, physical features, recreation amenities, and other features creating value or detracting therefrom.

Briefly describe the actual designated typical site(s) within each group in the recreation residence tract. Show the reasoning leading to the differences between the typical site(s) within each group as measured in the market.

Any improvements on or to the site(s) provided by or at the expense of the holder must be explicitly identified in the appraisal report. Emphasize and document that these improvements are not included in the value conclusion, nor are similar type improvements included in the adjusted market price for comparable sales. Additionally, those items effecting value external to the typical site(s) provided by the Forest Service or third parties bearing on the value conclusion in a positive or negative manner are to be documented, discussed, and adjusted for as necessary as they relate to the subject and comparable sales. Private-sector transactions consider any and all improvements on and to the land. Permits require the holders to provide all improvements on and to the native, natural land to make it ready for the purpose for which it was intended--a recreation residence site. All similar such improvements on comparable market sales shall be excluded from value consideration and adjustments made to the comparables reflecting any such factors contained within the property boundary.

#### C-2.2(b)(3) - PART III - ANALYSIS AND CONCLUSIONS

A. Highest and Best Use/Authorized Use. The highest and best use of the site is for its permitted use, being a recreation residence site which cannot be used as a permanent and sole place of residence.



**B. Estimate of Value**

1. The appraiser shall ensure values of the designated typical site(s) in each grouping are based on comparable sales of sufficient quantity and quality which result in the least amount of dollar adjustment (in terms of absolute dollars) to make comparables reflective of the subject site(s). A permitted site is a unique blending of public and private interests. All site characteristics shall be addressed within the appraisal in terms of current market standards of value in relationship to, but not limited to:

- (a) Physical differences between subject and comparables;
- (b) Legal constraints imposed upon the market by governmental police powers;
- (c) Economic considerations evident in the market;
- (d) Locational considerations of subject typical site(s) in relation to the market comparable sales;
- (e) Functional usability and utility of the typical site(s).
- (f) Amenities accruing to the subject in relation to comparable sales;
- (g) Availability of improvements or services provided by parties other than permit holders, including services provided by the Federal Government;
- (h) Other market forces and factors identified as having a quantifiable effect on value.

2. Cash market value shall be based upon the typical site(s) use as a recreational residence homesite and shall be supported by confirmed recent transactions of comparable sites having similar uses, but adjusted for differences from the subject site(s). Only the market data approach (sales comparison analysis) need be developed by the contractor, unless there is market evidence another appraisal technique is more applicable.

3. In the designated recreation residence tract, appraise the typical lots identified, rather than all individual lots. The typical site(s) for each recreation residence tract have been pre-selected by the Forest Service and the holders. The objective is to keep the number of typical sites appraised to a minimum.

4. For each sale used in the market data approach, list: parties to the transaction, date of the transaction, confirmation of transaction, size, legal description, interest conveyed, consideration, conditions of payment (cash or terms--contract sales shall be discussed and conclusions made as to their cash equivalence), improvements (kind and whether they contribute to highest and best use), outstanding rights and reservations and their effect on value, zoning, and physical description--topography, cover, etc.

. Much of this type data need not be repeated in the narrative portion of the appraisal if included in a complete analysis of the sale data write-up included in the Addenda.

For each sale, describe water, roads, electric power, sanitation systems, and other site external influences such as road maintenance, as well as who provides them and on what frequency--the buyer or seller, governmental agency, or no one. Specifically relate external influences to the appraised typical sites(s). Each of these items should be measured in the market as to what effect they have on the market value of the site (s) being appraised.

5. Market value is cash market value or terms equivalent to cash. All value estimates shall be made on the basis of cash or cash equivalence. The effect of term sales on market value shall be considered and conclusions documented in the appraisal report. Normally, when recreation homesites are sold on terms, subdividers shall sell at a lower price for cash. If sufficient cash sales are found, comparisons should be made to cash sales in lieu of contract sales. Contract sales may be used, but should be adjusted for terms when evidence in the marketplace indicates a discount rate for such sales. In all cases, the reason for making or not making an adjustment shall be stated and supported.

6. Each comparable sale should be described in narrative form in sufficient detail to indicate how it compares with the appraised property in elements effecting value.

When the subject typical site(s) and comparable sale differ substantially in value, adjustments must be shown in sufficient detail (and in dollars or percentages, if appropriate) to allow the reviewer to judge validity and acceptability.

When the value of the subject typical site(s) and comparable are not substantially different, lump sum adjustments are acceptable, though the elements of dissimilarity effecting value must still be listed.

7. Sales with improvements (such as water systems, electric power, etc.) dissimilar to the appraised site(s) may be used if appropriately adjusted. It is essential to spell out in the appraisal what improvements were provided and included in the sales price by the subdivider or previous owner of the comparable sites, and which improvements were left for the buyer to perform. The appraiser must demonstrate all differences in improvements between the National Forest System typical site(s) and the comparable sales--such as roads, water and utilities--were considered and equated to the value of the subject with appropriate adjustments made to the comparable(s).

8. The final estimate of value shall be on the basis of the total value for the typical site, rather than a value per square foot, per front foot, etc. Normally, the unit of comparison in the appraisal of recreation residence sites shall be the site.

Permitted size is not an overriding factor where only one residence is allowed on a site. National Forest recreation residence sites often enjoy a much greater effective area than the permitted area. Many offer equal or better privacy or view than larger private lots. Price per front foot for waterfront sites may be appropriate where it is demonstrated similar sites are bought and sold on a front-foot basis. However, the final estimate of value for the typical recreation residence site shall be in terms of total value for the site.

Wherever price per front foot is used as the unit of comparison, a value estimate shall also be developed using the overall price per comparable as the unit of comparison.

9. If there is a public access strip retained between the lot boundaries and a river, lake, or other natural attraction, it is to be identified clearly how the appraiser considered and made, or did not make, allowances for the effect of this public access area. The proximity, accessibility and control of the site frontage upon the natural attraction is unique in the relationship with the non-public sector. Private transactions shall typically convey the full use and enjoyment of all the land down to (and at times including) the actual frontage on a natural attraction (lake, stream, etc.). To adequately provide for the full public use and enjoyment of natural features in a recreation residence tract area, the government prohibits private control of the actual frontage and it is excluded from all permits.

When private market comparables include exclusive control in the conveyance, warranted adjustments may be needed to account for the subject under appraisal not having the same quality of frontage as that of the comparable. Should market transactions not be available in the immediate comparable area(s), transactions from any similar area shall be acceptable for purposes of establishing percentage adjustments to market prices of comparable sales.

10. Information furnished by holders shall be considered, and relevant material referenced in the report.

C. Reconciliation and Final Value Estimate. The appraiser must interpret the foregoing data, analyses, and estimates; and state reasons why conclusions reached in the Estimate of Value section of the appraisal report are the best indications of the market value of the typical site(s). The indications given by the various sales cited and compared shall be analyzed to reach the final value estimate, showing which sale or sales were considered most comparable and provided the best reliable indication of value for the typical site(s). The final value estimate as sought by the appraisal purpose, assumptions and limiting conditions represents the appraiser's reasoned, professional opinion of market value consistent with:

1. The definition of value being sought;
2. Highest and best use(s) of the site as of the date of appraisal;

3. Quantity of available market evidence;
4. Quality of available market evidence;
5. Applicability of underlying appraisal theory and practice;
6. Assumptions bearing on the appraisal problem;
7. Limiting conditions specified or identified.

D. Certification - The certification of appraisal shall contain, at a minimum, the following:

I certify that, to the best of my knowledge and belief:

1. "The statements of fact contained in this report are true and correct and no important facts have been withheld."
2. "The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions."
3. "I have no (or the specified) present or prospective interest in the property that is the subject of this report, and I have no (or the specified) personal interest or bias with respect to the parties involved."
4. "My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report."
5. "My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the 'Uniform Appraisal Standards for Federal Land Acquisitions' and the 'Uniform Standards of Professional Appraisal Practice'."
6. "I have made a personal inspection of the appraised property which is the subject of this report and all comparable sales used in developing the estimate of value. The date(s) of inspection was \_\_\_\_\_, and the method of inspection was \_\_\_\_\_."  
(If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)
7. "No one provided significant professional assistance to the person signing this report." (If there are exceptions, the name and qualifications of each individual providing significant professional assistance must be stated.)
8. "The recreation residence holders or their representative jointly inspected the property with the appraiser on (date)." (or the recreation residence holders were invited to jointly inspect the property and declined)

9. "I certify understanding, and agree, this report shall be subject to review in conformity with the "Uniform Standards of Professional Appraisal Practice", as published by The Appraisal Foundation; and any documented finding of inadequacy shall be discussed and corrected as need be at no cost to the government."

10. "The appraisal is made and submitted in accordance with the standards of professional practice and code of ethics of the professional group(s) or association(s) in which I hold membership and to which I am held subject to penalties for violation thereof."

11. "In my opinion, the cash fair market value of the typical site(s) is \_\_\_\_\_ dollars (\$\_\_\_\_\_) as of \_\_\_\_\_ (date)."

By \_\_\_\_\_ (Appraiser's Signature).  
(Name and Title)

E. Qualifications of Appraiser. The qualifications of the appraiser shall be included in the report as evidence the appraiser is qualified to make such an appraisal. Additionally, the appraiser shall be required to execute and be bound by this contract which provides for:

1. The approved appraisal format to be used.
2. A full, complete, and accurate definition of the appraisal problem.
3. The standards of professional competence, ethics, and practices to which the appraiser shall adhere.
4. Those requirements of the appraisal assignment that may be imposed under (1) statutes, (2) Federal Regulations, (3) Forest Service policies and procedures, (4) situations unique to the given appraisal assignment. (1/)

C-2.2(b)(4) - Part IV Addenda and Exhibits (2/)

A. Exhibit A - Vicinity Map. This is normally a small-scale map 1/2" to 1" per mile. It shall show the appraised site(s) and surrounding area, as well as cultural and topographic features.

B. Exhibit B - Comparable Sales Location Map. This map shall show the location of sales used in estimating market value of the subject property. It may be combined with Exhibit A.

1/ These requirements are primarily found throughout the appraisal contract or as separate attachment.

2/ The Exhibits do not necessarily have to be placed in the Addenda. They may be placed where appropriate throughout the report.

C. Exhibit C - Recreation residence tract plat as furnished by the Forest Service and designating tract groupings and typical site(s) within a tract group.

D. Exhibit D - Color photographs of all typical sites(s) appraised and all comparable sales selected shall show pertinent details and features, including features for which value adjustments were made. The appraiser is free to include such photographs with the analysis of the site(s) and analysis of comparable sales to better illustrate the relationship of the properties. All copies of the appraisal report shall contain original photographs or comparable color copies.

E. Exhibit E - Other material--including pertinent documents, charts, maps, etc., not included in the exhibits listed above.

F. Exhibit F - Comparable Sale Data. Each sale listing shall include sale date, name of seller and buyer, assessor parcel number, legal or adequate description, size, consideration and terms of sale (down payment, payment schedule, interest rate, release clauses, etc.), confirmation or verification (date, by and with whom), purpose for which purchased, physical characteristics, access and location, outstanding rights and reservations, site improvements and utilities provided, special conditions or restrictive covenants, a map or sketch, and a photograph.

G. Exhibit G - A full and complete copy of the most stringent standards of professional practice and code of ethics of the professional group(s) or association(s) in which the appraiser holds personal membership and to which the appraiser personally ascribes.

H. Pework Conference - Prior to commencement of work, the appraiser will meet with Sr. Review Appraiser, Kim Brower, to discuss the project; preferably on-site. *Not on all Specs*

I. Use of Appraisal Reports - All submitted appraisal reports become the property of the United States and may be used for any legal and proper purpose. If requested by a holder or other interested party, a copy of the appraisal report shall be furnished by the Forest Service to the requesting party. The requesting party has 45 days in which to review the appraisal.

#### SECTION I - GOVERNMENT FURNISHED PROPERTY, DATA, AND SERVICES

The Government shall furnish the following at the appropriate Forest Service Supervisor's Office at the Contractor's request after the award:

I-1. Opportunity to view or possibly use of aerial photographs of the appraised property and of such other aerial photographs as are available. (To be returned to the COR upon completion of the appraisal.

I-2. Copies of pertinent Forest Service administrative maps as available, for use in the appraisal report.

INFORMATION

For additional information contact Kim Brower, Sr. Review Appraiser, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408, Telephone number (909) 884-6634, extension 3190.

INSTRUCTIONS TO BIDDERS

1. A prework meeting with Forest Service Sr. Review Appraiser Kim Brower is required. This may be accomplished during the appraiser's inspection of the properties. It is preferred that the meeting be conducted on the "typical sites" involved in the report.
2. The appraisal report must be reviewed and approved by the authorized Forest Service review appraiser before final payment will be authorized.

PERFORMANCE

Contract time will proceed according to the following phases. Upon the completion of one phase, unused contract time will not be carried forward.

PHASE 1 - 60 calendar days following meeting with holders, the contractor shall submit to the Sr. Review Appraiser, at the address in INFORMATION, above, one (1) original draft appraisal report and two (2) copies covering the Federal lands contained in each of the various Recreation Residence Tracts listed in Appendix A.

PHASE 2 - The Government will inspect the draft appraisal report for compliance with the specifications and return the report to the contractor with instructions for preparation of the final appraisal report.

PHASE 3 - 30 calendar days following return of the reviewed draft report, the contractor shall comply with the instructions provided by the Sr. Review Appraiser and submit the final appraisal report in one (1) original and two (2) copies to her. One (1) copy submitted should be left un-bound for future duplication purposes.

PHASE 4 - The Government will review the final report for approval.

PAYMENT

Partial payments will be authorized as follows:

1. 75 percent of the contract price will be authorized upon approval by the Government of the draft appraisal report.
2. 25 percent of the contract price will be authorized upon approval of the final appraisal report (plus receipt of the required copies).

## M E M O R A N D U M

To:       Craig Frome/Kim Brower/John Moore  
 From:     Paul Tittman, Chief Appraiser, Forest Service  
 Date:     June 24, 1998

Subject:   Re-appraisal of Pettit Lake Recreation Residences

---

The reappraisal of the Pettit Lake Recreation Residence sites may not be presented, nor developed as a subdivision approach to value. It is the value of the representative site as though unimproved and in the state "as authorized" to a prescribed highest and best use as a Recreation Residence site that is sought. No consideration is to be given to the terms and conditions of the authorization, nor is the site to be appraised as anything other than a "stand alone" site, available in the competitive marketplace for such sites.

The value sought is the Fair Market Value of the subject site as defined in the Uniform Appraisal Standards for Federal Land Acquisition (1992 Ed). The property is to be assumed to be "for sale" in the competitive market for terms equivalent to cash. No consideration of costs to develop a subdivision, profit to a developer, risk nor infrastructure may be considered in the estimate of Fair Market Value for the subject. Conjectural nor speculative evidence may not be considered.

The appraisal must be based upon open market transactions of similar properties in the competitive area of the subject Recreation Residence site. Consideration may be made of sales of similar leasehold, interests with consideration for that part of the leasehold attributable to the land, and with due consideration for the leased fee interest. Allocation of land and improvements must be based upon market driven allocations, and should include the buyers allocation to the improvements, the county assessor's allocation for tax purposes, replacement cost new for similar improvement(s) from an acceptable source such as Marshall and Swift and allocation based upon paired sales of competitive properties with and without improvements.

The assignment does not consider any contributory value other than to the subject site under appraisal as a Recreation Residence site. Consideration will be given to neighborhood enhancements that were not paid for by the authorization holder or their predecessors. Enhancements to the neighborhood such as roads and utilities paid for by State and Local Government or Utility Companies shall be considered as they affect value.

Any departure from the standards prescribed in FSH 5409.12, Chapter 6 for Recreation Residence appraisals, without prior written authorization from the Forest Service Chief Appraiser shall be deemed a fatal flaw, and will result in rejection of the report.





United States  
Department of  
Agriculture

Forest  
Service

San Bernardino  
National  
Forest

Regional Appraisal Team  
1824 S. Commercenter Circle  
San Bernardino, CA 92408  
(909) 383-5588 (Voice)  
(909) 383-3770 (FAX)  
(909) 383-5616 (TTY)

File Code: 5410

Date: November 8, 1999

Mountain States Appraisal and Consulting, Inc.  
Attn: Joe Corlett  
1459 Tyrell Lane, Suite B  
Boise, Idaho 83706

Re: Second Appraisal of Pettit Lake Recreation Residence Tract

Dear Mr. Corlett:

I have received the appraisal report that you prepared for permit holders on identified typical lots within the Pettit Lake Recreation Residence Tract, located within the Sawtooth National Recreation Area, for my review.

After extensively reviewing your report, I cannot approve your value conclusions for Agency use nor can I recommend your values to the Forest Supervisor. Rather than prepare a terminal review that meets Standard 3 of USPAP, the following is my initial review response which addresses those areas of the appraisal which I perceive as flawed, or are in conflict with policy direction and/or the project contract specifications.

1. The date of value is incorrect throughout the entire appraisal. The correct and official date of value is August 9, 1996.
2. Page xviii under Improvements; The contract specifications require identifying those improvements furnished by the Forest Service or anyone other than the permit holders, and considering their contribution to the appraised value. None are identified here or elsewhere in the report.
3. Page 1 under PROPERTY RIGHTS APPRAISED; You state that the appraiser is not to consider any leasehold or leased fee interest in the subject properties. This is not a true statement. According to the contract specifications under C-2.2 (b) (2), "ESTATE APPRAISED is the unencumbered fee simple title of the typical site(s) as if held in private ownership, restricted to a recreation residence use, and subject to all applicable local governmental police powers." The contract specifications do not state that you cannot consider leasehold or leased fee interest sales to arrive at a fee simple value conclusion.

Due to the lack of any privately owned sales of sites in the subject's immediate neighborhood of Stanley Basin, it would have been prudent to analyze the Pettit Tract sales. An official Memorandum listed in your addenda, from the Forest Service Chief Appraiser Paul Tittman,



Caring for the Land and Serving People

Printed on Recycled Paper



ARA, specifically suggested this use as another source of market information. Given the unique market area of Pettit Lake and the lack of comparable fee transactions in the immediate area, disregarding this approach was fatal.

4. Page 5 under NATURAL AND NATIVE DEFINED: You have defined natural and native according to the Webster's dictionary, however, you failed to reference again the official Memorandum located in the your report addenda written by Chief Appraiser Tittman basically giving you the definition and the valuation direction in which to proceed. Also, improvements on or to the land made by anyone besides the permit holders must be considered.
5. Page 7 through 56 under AREA DATA: Much of the information is for Blaine County, Ketchum and Sun Valley areas and is not relevant to the appraisal of a recreation residence site at Pettit Lake; i.e. fertility rates. No specific market information was presented for the subject's immediate neighborhood around the lake. The entire Area Data section is misleading, giving me the impression that there has been no relevant market sales in this neighborhood.
6. Page 54, you state that cabin sites cannot be utilized on a year-round basis. This statement is unclear to me and seems to be misleading. If the reason for the sites not being used year-round is weather/access related then that needs to be clarified. The Forest Service does not prevent a permit holder from using the site year-round. The permit holder must have a primary place of residence other than the permitted recreation residence. Use being restricted to 364 days of the year is considered a permit restriction and should not be considered unless it is demonstrated in the market that recreation residences lots that can only be used 364 days of year sell at a different value. Again, if the restricted use is weather/access related then that needs to be more clearly defined.
7. Page 57 under Lot 1, Block D: This site has a dock and has use of an effective area between the authorized site and the lake. The contract specifications direct that this "effective site area" be considered. The site is said to be 60 feet from the lake shore. The permit holder has almost exclusive use of this public area as there are no real public trails paralleling the lake shore at this location. There are trails from the site to the dock with the apparent user being the permit holder.
8. Page 58 under SUMMARY AND CONCLUSIONS. The statement regarding year-round use is misleading or incorrect depending upon the weather/access situation. Also, even though the larger typical lot cannot be further subdivided or put to commercial use, the market needs to demonstrate whether the size of the lot does make a difference in sales price, especially since the lot has an extensive wet boundary.
9. Page 50 and 60. If improvements are made on and to the land by anyone except past or present permit holders, then those improvements need to be considered. The Forest Service provided the tract survey, staking and platting. This condition was made very clear at our pre-work meeting. Define year-round use.
10. Page 63. Infrastructure deductions are only made when the permit holders have contributed towards them. The type and condition of the infrastructure needs to be noted and considered. Incentive expenses are not an allowable deduction as per direction given to you by Chief Appraiser Tittman.

11. Page 64. Why were sales used at Priest and Payette Lakes? You state Priest Lake as being inferior and Payette as being superior with no real basis or support except for your opinion. Leasehold sales at Pettit Lake exceed Priest Lake and appear to be in similar price ranges when compared to Payette Lake sales. Before and after date of value prices at Pettit Lake were \$350,000 to \$824,000.

12. Page 74. Priest and Payette Lake sales are analyzed on a per front foot basis, then you use a regression "Power Curve" to fit the subjects on a price per square foot basis. This method does not consider the far superior lake frontage on subject Lots 1-E and 2-E. Both of these subject sites have lake frontage on at least two sides, with Lot 1-E being on the end of peninsula. If you consistently use front foot, a very different value conclusion would result. Example: Lot 2-E is one-half acre with approximately 450 feet of lake frontage (compared to the sales which only have one side that is adjacent to the lake, typically 50 to 100 feet). If the absolute low end of the sale ranges from Priest and Payette were used, based on dollars per front foot (\$1,950 to \$4,000/FF), this would indicate a range of \$877,000 to \$1,800,000 before considering any other adjustments. Your indication of value conclusion to this point was \$352,000.

13. Page 84. In reconciling your sales data located at Mcall and Priest Lake, you averaged all of your sales data. It would be more appropriate to actually choose those sales that are the most comparable, bracket your data, or make adjustments, then arrive at a value conclusion for each area. The values for each area can then be reconciled into one value conclusion for each of the typical lots. Refer to pages 75 and 76 of the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).

You also used road construction figures from Marshall and Swift that are dated after the date of value of the appraisal. This is inappropriate. There is no support stated for you using a modified 3% upwards cost factor for difficult terrain. Should the same road cost be applied to Lot 1, Block E? It is accessed by a Forest Service maintained road to within a few yards of the lot. Should two miles of road costs be deducted when the first mile is via a Forest Service maintained road? You state a cost of \$12.36 per linear foot for the road. Is this cost for the same type of road that is currently in place? Why was a Marshall and Swift cost figure rather than a local cost?

For all other costs, why weren't specific local data used? Bids that I have seen from US West for telephone lines on a tract in the same neighborhood are \$1.70 per linear foot for 11,000 feet; substantially below \$6.50 per linear foot in your report.

14. Page 85. What were the permit holder's cost in installing the electrical line? Do the costs you are using reflect what is actually on the subject sites? What is the current water system on the typical lot or tract? What costs were incurred by the permit holders? The same would hold true for the on-site sewer system. Who paid or provided for phone service?

15. Page 86. As previously discussed, the use of an incentive deduction is inappropriate and irrelevant to the appraisal problem. The original lotting of recreation residences was for a personal, exclusive use; not for typical subdivision resale. The site is already created by the Forest Service, similar to a subdivided lot where a purchaser may need to add items like a driveway, well or septic. Again, the Forest Service provided the tract survey, staking and

FOR  
LEASEHOLD  
ONLY

Joe Corlett

page 4

platting. It is not proper to deduct the developer's portion of risk, profit, etc., that was necessary to get it to the site/lot condition.

16. Page 87, public front adjustment; The application of applying a discount of -20% to -34% is not supportable given that all three of the subject lots have almost exclusive use of very extensive lake frontage or exclusive use of an effective area between the site and dock on the lake.

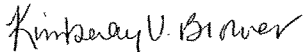
17. Page 88, the reference made to the 20% deduction made for an easement bisecting the site; Since Lot 1, Block E is a large lot with a highest and best use of one recreation residence, how can this lot have its utility impaired by this easement?

18. Comparable Sales Sheets; The UASFLA specifically states that all sales must be confirmed by the buyer, seller or someone that is a party to the transaction. Most of your sale sheets indicate that you interviewed the "public record" or lists a name that is not a buyer, seller or identified as a party to the particular transaction. Your confirmations will need to be reverified with the appropriate party, or your sales sheets will need to be clarified, or the sales may need to be removed from consideration.

All of the above items need to addressed. The most important items which lead to my initial disapproval of your appraisal report are the lack of a leasehold analysis converted to a fee simple value, the intermixing of dollars per lake front foot and dollars per square foot, the averaging of all sales data and the use of the incentive, public front foot, and easement adjustments.

I am requesting that any explanations addressing the above items be sent to me in writing. Your report will remain under consideration for the next 75 days from this letter. If I do not receive any information from you that address my concerns and findings adequately, then a USPAP, Standard 3 terminal review will be prepared. I can be reached at (909) 884-6634, ext 3190 or you may contact Kraig Frome at (801) 625-5367 if you are unable to initially reach me.

Sincerely,



KIMBERLEY V. BROWER, MSA, AAR  
Sr. Review Appraiser

cc: Larry Stone, Pettit Lake Cabin Owners Association  
K. Frome, R-4  
P. Tittman, WO  
B. Cotee, Sawtooth NF



MOUNTAIN STATES APPRAISAL  
AND CONSULTING, INC.

January 10, 2000

Jon C. Corlett, MAI  
G. Joseph Corlett, MAI, SRA  
Maurice J. Therrien, MAI  
Darrel Mathews, MAI  
Jody L. Graham, SRA  
Alan K. Marchbanks  
Scott R. Haxton

Ms. Kimberley V. Brower, MSA, AAR  
Senior Review Appraiser  
Regional Appraisal Team  
San Bernardino National Forest  
1824 S. Commercenter Cir.  
San Bernardino, CA 92408

Re: Response to  
Initial Review Comments on the  
Second Appraisal of the  
Pettit Lake Recreation Residence Tracts  
Blaine County, Idaho  
MS-4864-97

Dear Ms. Brower:

As you requested in your November 8, 1999 letter, I am submitting to you my responses regarding the preliminary review provided by you. I will attempt to respond to each paragraph by a consecutive number. However, I anticipate some repetition with regards to the principles employed in the analyses of the subject tracts. I appreciate the opportunity to have this occasion to respond to your review questions. Hopefully, my responses will enable you to complete a Standard 3 review on my report, without further difficulties. I will be available for your questions via letter or telephone at any time during the review process.

Regarding paragraph 1, the date of the appraisal was specified as December 31, 1996. There was some confusion at the pre-work meeting whereby the government's appraisal had an effective date of December 4, 1996, and an appraisal date of August 6, 1996. It was discovered that this was a typographical error and created the official date as of August 6, 1996. In the pre-work meeting, the date was described as August 6, 1996. However, it is my recollection that permits expired on December 31, 1995, and were offered a one-year extension to the end of that year. Thus, in order to comply with the expiration of the permits at the given dates, I believed I was instructed by Mr. Craig Frome or Mr. Cotee to make the effective date December 31, 1996. However, if you review the adjustment data, you will find that no time adjustments were made with regard to the sales analyzed. Therefore, if you wish the official date to be August 6, 1996, that is totally appropriate, without further adjustment. All values would remain the same.

With regard to paragraph 2, the contract requires that the appraiser identify those improvements furnished by the Forest Service, or anyone other than the permit holders, and consider their contribution to the appraised value. Since there were no improvements known to be put in place by the Forest Service, none were identified. If there had been improvements placed by the Forest Service, I would have clearly identified those improvements.

Under paragraph 3, with regard to the property rights appraised, it is my interpretation that it is totally improper to consider any leasehold or leased fee sales in the subject properties due to appraisal specifications. It was my assignment to appraise the fee simple interest, assuming a private ownership of land area relegated to restricted recreation residence use, defined in C-2.1(f)(2) of a non-commercial minimum use each year, but not to the exclusion of a permanent residence elsewhere (reference C-2.2(b)(3)(a)). These paragraphs represent the estate appraised and the highest and best use as prescribed in the specifications. Therefore, it is improper to consider leasehold sales in the valuation of fee simple tracts. Also, as defined in paragraph C-2.1(f)(3), the estate appraised defines the site as land in a natural, native state, as it was when it was first leased to a permittee.

Ms. Kimberley V. Brower, MSA, AAR  
January 10, 2000  
Page 2

You should also reference paragraph C-2.2(b)(2)(c), regarding external police power forces, which would cause the subject sites to have a minimum site size of ten acres. Blaine County has zoned the subject tracts as an A-10 zone, relegating the lots as pre-existing non-conforming legal uses. As such, externalities would result in a bonus value to the existing building improvements.

The second paragraph, under Item 3, refers to the memorandum from Chief Appraiser Tittman, suggesting the use of leasehold sales as a basis for land value estimation. This memorandum, in my opinion, violates appraisal principles as they relate to highest and best use and externalities. The instructions are contrary to the original written instructions, which reference the assignment to appraise the natural, native land, as it was when it was permitted. Also, leasehold sales benefit from positive external obsolescence (bonus) since they are pre-existing and non-conforming uses. I have attached an article written in 1981, specifically addressing this problem.

To allow further support for this concept, an example can be offered at this point in my response. Assuming that the stricter zoning imposed by Blaine County prevails, the subject sites would be required to be ten acres in size. It has been shown, based on research conducted by me in the Stanley market that five-acre single-family sites have sold for \$350,000. These are typically view sites. Additionally, a smaller 2.14-acre view site located within the confines of Stanley with an excellent Sawtooth view sold for \$275,000. It is logical to then assume that a ten-acre site having proximity to Pettit Lake would sell for something significantly greater than \$350,000. As such, the accrual between the difference of a smaller substandard lot ranging from 21,875 square feet to 151,589 square feet would be considerably less than a full ten-acre site with proximity to the lake. The difference between the two land values would represent an accrual or a bonus to the existing improvements. Thus, to use the sale of leasehold properties that are pre-existing, legal, non-conforming uses would represent a "fatal" analysis, violating appraisal principles. Additional comments will be included with additional references at the end of this response.

With regard to paragraph 4, the official memorandum listed as Exhibit A-11(a) in my report contradicts the written specifications and original pre-work agreement. There is no written instruction to support paragraph 1 of the memorandum with reference to a subdivision analysis. The *Uniform Appraisal Standards for Federal Land Acquisitions* clearly supports the use of a subdivision analysis on page 25 of that publication. Furthermore, the Forest Service Handbook requires adherence to the Uniform Appraisal Standards for Federal Land Acquisitions handbook. If I were to adhere to the memorandum, a departure from a complete analysis would be initiated. My original agreement was to provide a complete/self-contained appraisal report. As such, a departure under Standards Rule 1-1(a) would be caused, creating a misleading appraisal report. If the US Forest Service disagrees with an incentive allowance, the pre-incentive numbers are clearly stated in the report. That would be an internal prerogative on the part of the US Forest Service, but not consistent with the written appraisal specifications provided to me, outlining and underscoring the natural, native language.

The second paragraph of the memorandum is contrary to the *Uniform Appraisal Standards for Federal Land Acquisitions*, page 25. The subject would be considered "for sale" in a natural, native state, as a recreation residence site. There is absolutely no way to value the natural, native site based on "comparable sales", since there are no natural, native sites of that size that have sold. It is therefore imperative on the appraiser to complete a diligent residual analysis to define the value of the natural, native sites.

With regard to Paragraph 3 of the memorandum, there must be a reiteration that the memorandum is contrary to appraisal theory by referring to leasehold sales due to bonus accrual to the improvements. For an example, a current sale will close by the time you read this letter on Lot 2, Block D of the tracts for \$430,000. This site is improved with an 854 square foot residence in very good condition. It also has 780 square feet of decks. It is a two-bedroom/one-bath cabin. It has on-site septic and water systems. Thus,

Ms. Kimberley V. Brower, MSA, AAR  
 January 10, 2000  
 Page 3

if the Forest Service appraisal of \$450,000 were correct for the natural, native land, the improvements would be perceived to be a liability of \$20,000. This is just not the case, further supporting a much lower natural, native land value for the underlying site areas.

With regard to paragraph 4 of the memorandum, the lessees, according to research conducted by me provided roads and infrastructure improvements. It is my recollection, that the public uses adjoining the E tracts followed the lessee improvements. The lessee tracts were originally used as a remote hunting camp. However, public use followed the roads provided by the lessees. Also, the tracts were not previously occupied or developed by the government. Thus, there is no accrual to the government. A parallel is shown on page 7 of the *Uniform Appraisal Standards for Federal Land Acquisitions*, whereby improvements provided by the government would be excluded from any developed valuation.

Finally, in conclusion with regard to the memorandum, I have followed the *Uniform Standards of Professional Appraisal Practice* and the *Uniform Appraisal Standards for Federal Land Acquisitions*, as well as specifications in the *Forest Service Handbook*, 5409.12, Chapter 6, to the extent that national experts were consulted and concurred with the appraisal techniques applied in view of the assignment at hand.

With regard to your paragraph 5, as to the area data, I was writing for a reviewer in California. I included all of the Blaine County data available to me for your perusal. There was no intent to mislead, but rather to inform. Again, sales of leaseholds in the subject tracts are not relevant to the assignment at hand. To use those sales without proper analyses of the accruals or bonuses to the improvements would be totally misleading.

With regard to paragraph 6, you refer to page 54, which states that the sites cannot be utilized on a year-round basis. This statement of year-round use should not be unclear or misleading with reference to C-2.1(f)(2), stating minimum use by families and guests, but not to the exclusion of a permanent residence elsewhere. Also, please review the current permits I, paragraph C, which states that use as a principal residence is prohibited and if used as such would be the grounds for revocation of the permit. Additionally, seasonal access was the basis for adjustment in the sales comparison analysis and summary. It is very unlikely that somebody would maintain a residence elsewhere as a primary residence and occupy a subject site for 364 days a year. Hopefully review of both the specifications and the existing permits will clarify that issue for you. With reference to paragraph 7, you state that on page 55, that Lot 1, Block D has the effective use of the area between the site and the lake. However, this is, in fact, public ownership. There is a walking trail around the perimeter of the lake at this point. Market evidence presented in my report strongly suggests a loss in value or decrease in the sales price for those properties not having exclusive use of the land areas to the high water line. There is nothing whatsoever that would preclude the public from utilization of the public land areas between the lots and the high water line. Based on this factual data, adjustments were made to the lots for the lack of exclusive water frontage.

With reference to your paragraph 8, you mention that page 58 under the summary and conclusion section of the report that I make the statement that they cannot be occupied on a year-round basis. Again, this is a factual statement dictated by not only the highest and best use definition in the report, but also the specifications as cited previously. To state that the definition and language do not impact a valuation would be misleading and incorrect.

Size has a significant impact on the price paid per square foot. This is clearly shown on pages 75 and 84, as well as the respective facing pages. There is a stronger correlation of prices paid on a per square foot basis than per lake front foot, as stated on page 83. Since the larger parcel cannot be further subdivided, this analysis would be totally justified and is well supported in the data presented. I also made the statement in this section of the report that an encroachment of the public day-use area would be

Ms. Kimberley V. Brower, MSA, AAR  
January 10, 2000  
Page 4

experienced by the adjoining peninsula sites. This would be a detriment to the values of the sites compared to the smaller sites, which have virtual seclusion on the other side of the lake.

Your paragraph 9 refers to pages 50 and 60 of my report. My not deducting the platting, surveying, and staking expenses, the government-provided "improvements" were automatically included in the residual natural, native land values, which were estimated. You also request a definition of year-round use. Year-round use, in my opinion, would be the right to occupy the cabin as a principal residence 365 days a year without a primary residence elsewhere. As such, it would be highly unlikely that any reasonable individual would acquire a residence elsewhere as a primary residence and subsequently occupy the site for 364 days a year. The leasehold sites on Pettit Lake are extremely well monitored by the local forest. Tree cutting and other violations of the permits are extensively monitored, according to the permittees. Again, the year-round use would be subject to the interpretation of the local ranger.

Regarding paragraph 10 and incentives and other infrastructure expenses, I have followed the guidelines presented in the *Uniform Appraisal Standards for Federal Land Acquisitions*, page 25. Incentives are, in fact, an element of value. According to my research, all infrastructure expenses were paid by the permittees during the course of the development of the sites. To ignore these expenses or risks of development by the lessees would be a departure from the standards. This would cause a limited analysis according to USPAP Standards 1-1(a), whereby risk and incentives endeavored by the lessees would be overlooked and effectively double-counted, contrary to appraisal specifications. Again, natural, native land is different than a developed site. If the Forest Service had, in fact, contributed all infrastructure development expenses to the creation of the subdivision, an incentive would be retained by the Forest Service for the underlying risk in completing those improvements. This, however, is not the case for the Pettit Lake tracts.

Your paragraph 11 refers to my page 64. I selected Priest and Payette Lake cabin site sales due to similar appeals and alpine characteristics. Sales of Priest Lake sites were considered inferior to the subject sites with regard to locational attributes and market appeal, while Payette Lake is superior due to development potential and conforming uses. McCall also has a superior service industry and is generally improved with conforming improvements allowed under the city zoning. These lakes had the most pristine locations and had fee simple sales. I could have used sales in the Williams Lake development, located up Williams Creek near Salmon, Idaho, at site prices between \$50,000 and \$75,000 each, but felt the alpine locations were the best comparisons. The sites that sold in Williams Lake are much more arid, while on the water, with fee ownership to the high water line. These sales were used in the previous appraisals of the Pettit Lake tracts. Nevertheless, I ended up bracketing with the two best sales locations when compared to the subject. It was my opinion, based on knowledge of the market and the relative prices paid, that the subject sites are midway in appeal between the Pettit Lake sites and the Payette Lake sites.

Again, sales prices of any property on Pettit Lake are irrelevant to the analysis because of the accrual or bonus situation due to a pre-existing legal non-conforming use.

Your paragraph 12 refers to page 74 of my report. As stated earlier, the best correlation of the market data is clearly shown by the power curve analysis utilizing the prices paid per square foot. The correlation coefficient is approximately ten points higher, indicating a superior degree of accuracy. Additionally, the peninsula sites are impacted by the proximity of the public day camp located east of the sites. It was, therefore, my conclusion that the square foot method of valuation was most appropriate. This is further supported by the concept of positive external obsolescence, since the peninsula tip sold for \$710,000 as a leasehold, falling far short of the \$877,000 to \$1,800,000 referred to in your paragraph. Again, I would suggest a review of the laws of Increasing and Decreasing Returns, as set forth in the 11<sup>th</sup> Edition of the *Appraisal of Real Estate*, pages 44-45. Also, there is a good discussion on externalities, pages 46-48.



Ms. Kimberley V. Brower, MSA, AAR  
January 10, 2000  
Page 5

Paragraph 13 refers to page 84, in which you state that I averaged all of my sales data. Actually, the averaging resulted from a bracketing of two separate locations as stated earlier. Priest Lake is estimated to be as inferior to Pettit Lake as Payette Lake sales are considered superior to the Pettit Lake sites. Thus, the sales, which were reconciled to a single value indication, were used to bracket the subject site values. In compliance with the *Uniform Appraisal Standards for Federal Land Acquisitions*, pages 75 and 76, adjustments were made to the comparables in the individual sales analyses.

With reference to your second paragraph under Section 13, it is my understanding, from historical research, that infrastructure costs were borne by the original lessees, consistent with the *Uniform Appraisal Standards for Federal Land Acquisitions*, page 7, which states that infrastructure expenses paid by someone other than the government will be excluded. This is also consistent with the specification section, C-2.2(b)(1)(D)(1), requiring exclusion of permittee-provided improvements.

*Marshall and Swift* cost data is commonly used by appraisers in the marketplace. There have been few, if any, similar roads built in the SNRA. Road costs are higher in undulating, rocky terrain. A three-percent adjustment is appropriate for local conditions. For example, road costs estimated in a proposed BLM land exchange in Conant Valley, Idaho, in eastern Bonneville County, were estimated by a local contractor known as HK Contractors. The 1,400-foot by 50-foot roadway was estimated to have a bid cost of \$25 per lineal foot. Scraped driveways had a minimum cost of \$5 per lineal foot. Further supporting the slightly over \$65,000 per mile expense estimated by me is a \$68,000 per mile expense obtained from the BLM for roads constructed in Adams County, Idaho, with similar physical features. Therefore, the infrastructure expense of \$65,000 per mile, or \$12.36 per lineal foot, is correct. The *Marshall and Swift* cost figure was used by me since it coincided with existing bids known to me, as well as the ability to refine costs.

Additional costs were obtained by me from the Salmon River Electric Company, at \$50,000 per mile with underground service at four-foot depth. This is a logical methodology for an alternative power source for the subject if constructed as of the appraisal date. This cost is cheaper than acquiring additional overhead right-of-way, in my opinion, since it would be located in the road right-of-way, which is already in existence. Also, please review Item G of the *SNRA Recreation Residence Operation and Maintenance Plan*.

Telephone extensions were obtained by using *Marshall and Swift*, as well as contacting Sawtooth Telephone Company. This is clearly stated on page 85. The amount estimated by me appeared reasonable when posed to the personnel at the telephone company. Obviously, if you have superior cost data with regard to telephone line extensions, I would most welcome that information.

Your paragraph 14 refers to page 85 of my report. The permit holder's actual costs are not appropriate to the problem since they are historical. The proper appraisal process is to estimate the cost (value) as of the appraisal date. An historical figure is not appropriately used in current appraisal techniques. Also, whether the owners historically had to pay for the infrastructure expenses is not relevant since they would currently have to pay for all infrastructure expenses, again, referring to the date of the appraisal.

The costs used were considered appropriate to the improvements observed. The permittees had telephone service installed in the past. Again, historical costs are not relevant. It is the cost (value) as of the appraisal date that is pertinent.

Other on-site costs or values were estimated based on current replacement costs.

Your paragraph 15 refers to my page 86. You state that an incentive deduction is inappropriate and irrelevant to the appraisal problem. It is my opinion that an incentive is an integral element of all developed sites. Since the appraisal specifications define the subject site as a "natural, native land", (reference C-2.1(f)(3)) an incentive must be deducted. There is absolutely no debate among appraisal peers that

Ms. Kimberley V. Brower, MSA, AAR  
January 10, 2000  
Page 6

incentive is an integral portion of any developed site value. The US Forest Service did not develop the sites and would not be due the incentive portion of value. If the US Forest Service did do the entire development, then incentive would not have been deducted. According to Mr. Jim Eaton, MAI, a recommendation was made that incentive be added on each increment of infrastructure, starting with the vacant land. However, since I had absolutely no lake front sales of natural, native land, that endeavor was not possible and was much more subjective than the process that was, in fact, used.

The sites were not, in fact, created until the permittees extended infrastructure improvements. Again, reference terminology differences between site and land in the *Dictionary of Real Estate Appraisal*, pages 197 and 334, as well as specification C-2.2(b)(1)(D)(1), excluding permittee improvements on and to the land, which would include incentives in this case. Staking and surveying costs were not deducted. To my knowledge, there is no county plat. Thus, all US Forest Service costs, if any, were not deducted. Therefore, the residual for the natural, native land would have included these costs since they were not line-item deductions.

Appraisers surveyed by me have agreed unanimously that incentive must be deducted to arrive at a natural, native land value, as per Forest Service specifications.

Paragraph 16 refers to page 87 of the report. You state that the application of applying a discount of -20 percent to -34 percent is not supportable, given that all three of the subject lots have an almost exclusive use of very extensive lake frontage or exclusive use of an effective area between the site and the dock on the lake. My non-exclusive lake front adjustment was applied based on the data analyzed. There is evidence that a public frontage is not as desirable as fee ownership running to the high water line. Adjustments of -20 percent to -34 percent reflect the differentials between setbacks ranging from about 10 feet to over 60 feet. Additional support for a deduction is the continuing conflict regarding permittee dock specifications and difficulties in obtaining US Forest Service approvals for docks abutting non-leasehold land. Please review paragraph 9 of the specifications.

Your paragraph 17 refers to page 88. A 20 percent deduction was made for an easement bisecting this site. An easement bisecting a site does diminish value. Case law holds this as fact. The easement is a dominant right held by another over a servient estate. An analysis is presented on page 88 of my report with regard to this diminution. Another possible method for analyzing this loss in value would have been to decrease the site area by the easement area, and reflect a loss in value. It is also likely that the subject site improvements would suffer severance as a result of having an easement bisect the property.

Your paragraph 18 refers to the comparables sales data and the *Uniform Appraisal Standards for Federal Land Acquisitions* specifications. Idaho is a non-disclosure state. Data was verified in accordance with UASFLA, page 76, which you partially misstate as "or someone that is a party to the transaction", which should read "or other person having knowledge of the price, terms, and condition of sale". Brokers frequently require anonymity, which is permitted. To confirm a sale, other parties can include associated appraisers with specific knowledge of the sales. Therefore, this data used does comply with UASFLA.

#### Summary and Conclusions

By using a leasehold sales analysis, you would be applying inconsistent and erroneous appraisal methodology in this case due to the pre-existing, non-conforming legal uses of the sites. The sites would have to be a minimum ten acres in this county, which would represent an accrual or bonus to the improvements on the substandard leasehold site sizes. Also, it is possible due to specifications C-2.2(b)(2)(C) that the sites would hold no value since the more stringent Blaine County zoning would not issue a permit on a substandard site. I would also direct your attention to the 11<sup>th</sup> Edition of the *Appraisal of Real Estate*, pages 314 and 315, as they relate to legal, non-conforming uses.

Ms. Kimberley V. Brower, MSA, AAR  
January 10, 2000  
Page 7

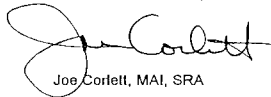
It is my opinion that my appraisal report most accurately conforms to USPAP, UASFLA, and the *Forest Service Handbook and Specifications* with regard to the appraisal assignment. The crux of the assignment is to estimate the market value of the natural, native land, as underlined in Section C-2 of the required appraisal specifications. Since the Forest Service did not develop the sites, it is illogical and improper to charge the permittees for an incentive since the Forest Service undertook no risk. Obviously, an incentive adjustment would not have been taken had the Forest Service would, in fact, had been the developer of the subdivision. It is my recommendation that if the Forest Service wishes to remove the incentive portion from my value, they may do so internally. For me to remove the incentive would cause a departure from appropriate appraisal standards and be misleading to the reader.

I would be most happy to answer any additional questions you have and discuss any of the issues that I have presented in this supplement to my report.

It should be understood that this response is, by reference, made a part of the original appraisal report, and is, therefore, subject to the assumptions and limiting conditions and certifications set forth therein.

Respectfully submitted,

MOUNTAIN STATES APPRAISAL  
AND CONSULTING, INC.



Joe Corlett, MAI, SRA

sh

WO AMENDMENT 5409.12-93-6  
EFFECTIVE 10/27/93

5409.12.6.9, Ex. 03-06  
Page 23 of 33

6.9 - Exhibit 06

SECTION C-2 REQUIRED SPECIFICATIONS FOR  
APPRAISAL OF RECREATION RESIDENCE SITES

SECTION C-2 GENERAL SPECIFICATIONS

C-2. GENERAL. The contractor shall furnish all materials, supplies, equipment, personnel, travel (except that furnished by the Government listed in Section       ), and shall complete all requirements of this contract including performance of the professional appraisal services listed herein.

The project consists of one narrative appraisal report per recreation residence tract grouping listed in Section       . Each appraisal report shall be furnished in an original and        copies. The appraisal shall provide an estimate of fair and equitable cash market value for a typical site, a site within a tract or group of tracts, as if in fee ownership and restricted to a recreation residence site use, excluding all permittee provided improvements on and to the site.

C-2.1(b) - Narrative Appraisal Report. The contractor shall make a detailed field inspection of the designated typical site(s) within each recreation residence tract. The contractor must make investigations and studies as are appropriate and necessary to enable the contractor to derive sound conclusions in conformance with recognized appraisal standards; and shall prepare a written report.

The date of value in the appraisal shall not be more than 30 days earlier than the date of delivery of the completed report to the Government. 11/1  
This date should be the date the typical site(s) are last inspected by the contractor, if possible, but in no event later than        days prior to       , the date established by the Forest Service.

DATE 8/7/96  
15 OF 17/31/96

C-2.1(c) - Meeting Notice. The contractor is obligated to provide recreation residence permittees in a tract grouping a minimum of thirty (30) days of advance notice of the site examination date. Notices shall be sent, certified mail, return receipt requested, to addresses furnished by the Forest Service. Receipts shall be given to the contracting officer representative. The contractor shall give permittees, permittee representatives, and a Forest Service officer the opportunity to meet with the contractor to discuss the assignment. The meeting shall be held at a location most convenient to the tract grouping and at a time when most affected permittees could be expected to attend. This notice, and the responses thereto, shall be documented in the contractor's letter of transmittal of the appraisal report. The appraiser shall have available for review full and complete copies of all appraisal instructions, directions, and requirements at said meeting. 11/1

C-2.1(d) - Updating of Report. Upon the request of the Forest Service, the contractor, during a 2-year period following the valuation date of the appraisal report, shall update the value as of a specified date. The updated report shall be submitted in original and three copies and include sales data or other evidence to substantiate the updated conclusion of value if a change in value occurs.

A-1(a)  
Specifications

5.9 - Exhibit 06--ContinuedSECTION C-2 REQUIRED SPECIFICATIONS FOR  
APPRAISAL OF RECREATION RESIDENCE SITES

C-2.1(a) - Definition of Terms. All terms, words, and processes (unless specifically defined and given herein) shall have the meaning and be interpreted in accordance with the definitions of same as contained in the most recent edition of "REAL ESTATE APPRAISAL TERMINOLOGY", prepared and distributed by the Society of Real Estate Appraisers; and/or the most recent edition of THE DICTIONARY OF REAL ESTATE APPRAISAL, prepared and distributed by the American Institute of Real Estate Appraisers.

C-2.1(f) - Assignment of Specific Definitions:

(1) Permit - A permit is a special use authorization to occupy and use National Forest System land for a specified period and is revocable and compensable according to its terms.

(2) Recreation Residence - A privately owned, non-commercial principal structure, its auxiliary buildings, and land improvements located upon National Forest System lands as authorized under a permit issued by an authorized officer. The residence is maintained by the permittee for the use and enjoyment of individuals, families, and guests. As a recreation facility, it is intended for use as a recreation residence for a minimum period each year, but not to the exclusion of a permanent residence elsewhere. As a private privilege use of National Forest System lands, the occupancy cannot interfere with public or semi-public uses having a documented higher priority. *IS WHY AND*

(3) Site - The site is the actual physical area of National Forest System land as described in a permit, said land being in a natural, native state when the exclusive use was first permitted by an authorized officer. *Cew*

(4) Tract - A tract is a logical grouping of recreation residences occupying an area of National Forest System land in a planned and/or approved manner similar to private-sector subdivisions. Typically located near scenic natural attractions (lakes, streams, mountains, scenic views, etc.), tracts are designed to be environmentally acceptable, compatible with the public interest, and to provide full public use and enjoyment of the natural attraction. Residences within a tract are subject to terms and conditions of individual permits issued. In general, permits within a tract grouping provide for similar privileges, restrictions, terms, and fees; and apply to land units having similar utility of physical, legal, economic, locational and functional characteristics.

SECTION C-2.2 - TECHNICAL SPECIFICATIONS

C-2.2(a) - Format. The report, in form and substance, must conform to recognized appraisal principles and practices applicable to estimating cash market value as outlined in the "Uniform Appraisal Standards for Federal Land Acquisitions" (U.S. GPO Stock Number 5259-0002), except as modified or amended herein. The appraisal report shall present document adequate factual data and analysis to support any rate.

A-1(b)  
Specifications

6.9 - Exhibit 06--ContinuedSECTION C-2 REQUIRED SPECIFICATIONS FOR  
APPRAISAL OF RECREATION RESIDENCE SITES

percentage or dollar adjustment made to any comparable sale; as well as any other value information in sufficient detail to permit an intelligent peer review. The report shall be typewritten on bond paper sized 8 1/2 by 11 inches with all parts of report legible; shall be bound with a durable cover; and labeled on the face identifying the appraised property including contract number, appraiser's name and address, and the date of the appraisal. All pages of the report, including the exhibits, shall be numbered sequentially.

C-2.2(b) - Contents. The report shall be divided into tabulated parts of at least:

PART I - INTRODUCTION  
PART II - FACTUAL DATA  
PART III - ANALYSES AND CONCLUSIONS  
PART IV - ADDENDA

The content of the report shall contain, as a minimum, the following:

C-2.2(b)(1) - PART I - INTRODUCTION

A. Title Page. This shall include (1) the name and location of the recreation residence tract; (2) that the appraisal is for the Forest Service-USDA; (3) name and address of the individual or firm making the appraisal; (4) date of value estimate; (5) the report date and appraiser's signature.

B. Table of Contents. This shall be arranged in accordance with the sequence of typical headings with corresponding page numbers.

C. Summary of Facts and Conclusions. This is a brief 'resume' of the essential highlights of the report. The purpose is to offer convenient reference to basic facts and conclusions. Items which shall be included are (1) name of recreation residence tract; (2) size range of sites; (3) authorized use which is highest and best use; (4) improvements furnished by Forest Service included in appraised value; (5) estimated value of each typical site.

D. Statement of Assumptions and Limiting Conditions

1. All permittee-provided improvements on and to the land (site) have been identified in the body of this appraisal report, but have been fully excluded from the value conclusion cited herein.

2. The legal description cited herein was furnished by the Forest Service and is assumed correct.

3. The site(s) as appraised in this appraisal report were jointly selected by the Forest Service and the permittees; and provided to the appraiser. The site(s) are assumed typical, unless noted and elsewhere in this appraisal report that, in the appraiser's opinion

A-1(c)  
Specifications

6.9 - Exhibit 06--ContinuedSECTION C-2 REQUIRED SPECIFICATIONS FOR  
APPRAISAL OF RECREATION RESIDENCE SITES

selected site(s) is not representative of the recreation residence tract grouping. (The Appraiser may add additional assumptions and limiting conditions as necessary so long as they do not limit the scope, function, or purpose of the appraisal report; and accurately reflect attitudes found in the real property market as well as the "Uniform Standards of Professional Appraisal Practice," as published by The Appraisal Foundation.)

E. References. The contractor shall list the source of data incorporated within the report such as records, documents, technicians or other persons consulted, along with a statement of their qualifications and identification of the contribution to the report. To be included in the ADDENDA, such list shall contain the name, address, telephone, and date contacted for each person or organization from which the contractor obtained data included in the appraisal report.

C-2.2(b)(2) - PART II - FACTUAL DATA

A. Purpose of Appraisal. The appraisal purpose is a cash market value estimate of the fee simple interest of the National Forest System land underlying an area authorized by a permit, but without consideration as to how the permit would, or could, affect the fee title of the site(s) within a recreation residence tract, or the designated typical site(s) within a recreation residence tract grouping.

B. Definition of Market Value. The amount in cash or on terms reasonably equivalent to cash for which in all probability the property would be sold by a knowledgeable owner shall not be obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy. The value estimate must give accurate and careful consideration of all market forces and factors which tend to influence the value of property, and which bear on the most probable price in terms of money which the site should bring in a competitive and open market under all conditions requisite to a fair sale.

C. Estate Appraised is the unencumbered fee simple title of the typical site(s) as if held in private ownership, restricted to a recreation residence use, and subject to all applicable local governmental police powers. Federal government property is typically not impacted by non-Federal police powers such as zoning, building, health and land use codes, or development restrictions. Such use controls are a function of the permit in order to protect the public. Reconciliation of non-Federal police powers with permit restrictions of a like nature must be made. Warranted adjustments for these matters external to the site(s), but influencing the sites(s), must be quantified and made in the appraisal. For the purpose of the appraisal, the site(s) shall be considered as in private ownership subject to the more stringent of applicable local police powers or permit restrictions of a like nature.

A-1(d)  
Specifications

6.9 - Exhibit 06--Continued

SECTION C-2 REQUIRED SPECIFICATIONS FOR  
APPRAISAL OF RECREATION RESIDENCE SITES

D. Area and Local Data. The report shall include a concise discussion of market area, trends in use, and neighborhood or area analysis. This type of information is usually background data leading to the appraiser's conclusion of the highest and best use. In this instance, the highest and best use is the authorized use which is a recreation residence site within the constraints of all known physical, legal, economic, locational, functional, and amenity characteristics of the site and the market in which it competes.

E. Property Data. Include a narrative description of the significant land features appraised. Briefly describe the recreation residence site tract and the group(s) within the tract, access, location, physical features, recreation amenities, and other features creating value or detracting therefrom.

Briefly describe the actual designated typical site(s) within each group in the recreation residence tract. Show the reasoning leading to the differences between the typical site(s) within each group as measured in the market.

Any improvements on or to the site(s) provided by or at the expense of the permittee must be explicitly identified in the appraisal report. Emphasize and document these improvements are not included in the value conclusion, nor are similar type improvements included in the adjusted market price for comparable sales. Additionally, those items effecting value external to the typical site(s) provided by the Forest Service or third parties bearing on the value conclusion in a positive or negative manner are to be documented, discussed, and adjusted for as necessary as they relate to the subject and comparable sales. Private-sector transactions consider any and all improvements on and to the land. Permits require the permittees to provide all improvements on and to the native, natural land to make it ready for the purpose for which it was intended--a recreation residence site. All similar such improvements on comparable market sales shall be excluded from value consideration and adjustments made to the comparables reflecting any such factors contained within the property boundary.

C-2.2(b)(3) - PART III - ANALYSES AND CONCLUSIONS

A. Highest and Best Use/Authorized Use. The highest and best use of the site is for its permitted use, being a recreation residence site which cannot be used as a permanent and sole place of residence.

B. Estimate of Value

1. The appraiser shall insure values of the designated typical site(s) in each grouping are based on comparable sales of sufficient quantity and quality which result in the least amount of dollar adjustment (in terms of absolute dollars) to make comparables reflective--

A-1(e)  
Specifications



6.9 - Exhibit 06--ContinuedSECTION C-2 REQUIRED SPECIFICATIONS FOR  
APPRAISAL OF RECREATION RESIDENCE SITES.

of the subject site(s). A permitted site is a unique blending of public and private interests. All site characteristics shall be addressed within the appraisal in terms of current market standards of value in relationship to, but not limited to:

- (a) Physical differences between subject and comparables;
- (b) Legal constraints imposed upon the market by governmental police powers;
- (c) Economic considerations evident in the market;
- (d) Locational considerations of subject typical site(s) in relation to the market comparable sales;
- (e) Functional usability and utility of the typical site(s).
- (f) Amenities accruing to the subject in relation to comparable sales;
- (g) Availability of improvements or services provided by parties other than permit holders, including services provided by the Federal Government;
- (h) Other market forces and factors identified as having a quantifiable effect on value.

2. Cash market value shall be based upon the typical site(s) use as a recreational residence homesite and shall be supported by confirmed recent transactions of comparable sites having similar uses, but adjusted for differences from the subject site(s). Only the market data approach (sales comparison analysis) need be developed by the contractor, unless there is market evidence another appraisal technique is more applicable.

3. In the designated groups of sites within each recreation residence tract, each individual site shall not be appraised. The value estimate shall be for the designated typical site which is representative of a site group. Where recreation residence sites have significant differences measurable in the market, these sites have been classified in separate groupings; and a separate value shall be estimated for the designated typical site within that grouping. The typical site(s) for each recreation residence tract shall have been pre-selected by the Forest Service and the permittees. The objective is to keep the number of groupings and typical sites appraised to a minimum.

4. For each sale used in the market data approach, list: parties to the transaction, date of the transaction, confirmation of transaction, size, legal description, interest conveyed, consideration, conditions of payment (cash or terms--contract sales shall be discussed and conclusions

A-1(f)  
Specifications

NO AMENDMENT 5409.12-93-6  
EFFECTIVE 10/27/93

5409.12,6.9,Ex.03-06  
Page 29 of 33

6.9 - Exhibit 06--Continued

SECTION C-2 REQUIRED SPECIFICATIONS FOR  
APPRAISAL OF RECREATION RESIDENCE SITES

made as to their cash equivalence), improvements (kind and whether they contribute to highest and best use), outstanding rights and reservations and their effect on value, zoning, and physical description--topography, cover, etc.

(Much of this type data need not be repeated in the narrative portion of the appraisal if included in a complete analysis of the sale data write-up included in the Addenda.)

For each sale, describe water, roads, electric power, sanitation systems, and other site external influences such as road maintenance, as well as who provides them and on what frequency--the buyer or seller, governmental agency, or no one. Specifically relate external influences to the appraised typical sites(s). Each of these items should be measured in the market as to what effect they have on the market value of the site (s) being appraised.

5. Market value is cash market value or terms equivalent to cash. All value estimates shall be made on the basis of cash or cash equivalence. The effect of term sales on market value shall be considered and conclusions documented in the appraisal report. Normally, when recreation homesites are sold on terms, subdividers shall sell at a lower price for cash. If sufficient cash sales are found, comparisons should be made to cash sales in lieu of contract sales. Contract sales may be used, but should be adjusted for terms when evidence in the marketplace indicates a discount rate for such sales. In all cases, the reason for making or not making an adjustment shall be stated and supported.

6. Each comparable sale should be described in narrative form in sufficient detail to indicate how it compares with the appraised property in elements effecting value.

When the subject typical site(s) and comparable sale differ substantially in value, adjustments must be shown in sufficient detail (and in dollars or percentages, if appropriate) to allow the reviewer to judge validity and acceptability.

When the value of the subject typical site(s) and comparable are not substantially different, lump sum adjustments are acceptable, though the elements of dissimilarity effecting value must still be listed.

7. Sales with improvements (such as water systems, electric power, etc.) dissimilar to the appraised site(s) may be used if appropriately adjusted. It is essential to spell out in the appraisal what improvements were provided and included in the sales price by the subdivider or previous owner of the comparable sites, and which improvements were left for the buyer to perform. The appraiser must demonstrate all differences in improvements between the National Forest

A-1(g)  
Specifications

6.9 - Exhibit 06--ContinuedSECTION C-2 REQUIRED SPECIFICATIONS FOR  
APPRAISAL OF RECREATION RESIDENCE SITES

System typical site(s) and the comparable sales--such as roads, water and utilities--were considered and equated to the value of the subject with appropriate adjustments made to the comparable(s).

8. The final estimate of value shall be on the basis of the total value for the typical site, rather than a value per square foot, per front foot, etc. Normally, the unit of comparison in the appraisal of recreation residence sites shall be the site. Permitted size is not an overriding factor where only one residence is allowed on a site. National Forest recreation residence sites often enjoy a much greater effective area than the permitted area. Many offer equal or better privacy or view than larger private lots. Price per front foot for waterfront sites may be appropriate where it is demonstrated similar sites are bought and sold on a front-foot basis. However, the final estimate of value for the typical recreation residence site shall be in terms of total value for the site.

Wherever price per front foot is used as the unit of comparison, a value estimate shall also be developed using the overall price per comparable as the unit of comparison.

9. If there is a public access strip retained between the lot boundaries and a river, lake, or other natural attraction, it is to be identified clearly how the appraiser considered and made, or did not make, allowances for the effect of this public access area. The proximity, accessibility and control of the site frontage upon the natural attraction is unique in the relationship with the non-public sector. Private transactions shall typically convey the full use and enjoyment of all the land down to (and at times including) the actual frontage on a natural attraction (lake, stream, etc.). To adequately provide for the full public use and enjoyment of natural features in a recreation residence tract area, the government prohibits private control of the actual frontage and it is excluded from all permits.

When private market comparables include exclusive control in the conveyance, warranted adjustments may be needed to account for the subject under appraisal not having the same quality of frontage as that of the comparable. Should market transactions not be available in the immediate comparable area(s), transactions from any similar area shall be acceptable for purposes of establishing percentage adjustments to market prices of comparable sales.

10. Information furnished by permittees shall be considered, and relevant material referenced in the report.

C. Reconciliation and Final Value Estimate. The appraiser must interpret the foregoing data, analyses, and estimates; and state reasons why conclusions reached in the Estimate of Value section of the appraisal report are the best indications of the market value of the typical site(s). The indications given by the various sales cited and compared

NOTICE  
THIS MATERIAL MAY BE PROTECTED BY  
COPYRIGHT LAW (TITLE 17 U.S. CODE)  
FOR PERSONAL USE ONLY  
JF JMR

## Nonconforming-Use Properties: The Concept of Positive Economic Obsolescence

---

by J. Mark Quinlivan, MAI, and Vance R. Johnson

In recent years, the trend toward downzoning in many areas has been accompanied by an increase in nonconforming-use properties. Articles on nonconforming-use properties are extremely scarce, and appraisal texts barely mention the term, let alone discuss the valuation of this type of property.

In an article entitled "Legal, Nonconforming-Use Appeal,"<sup>1</sup> James W. Mourray states: "The author has searched in vain for a legal premise relative to the appraisal of such (nonconforming-use) properties. No appraisal publication of my knowledge has shed any light upon the matter." The authors of this article have not found any appraisal literature on the subject since Mourray's 1966 article. It is surprising that, with the increasing number of nonconforming-use properties, appraisal literature has not covered this topic.

This article will discuss one aspect of the nonconforming-use problem, suggest ways to handle the problem in the appraisal process, and demonstrate how this type of property may create a bonus value to the improvements, which we refer to as "positive economic obsolescence."

1. James W. Mourray, MAI, "Legal, Nonconforming-Use Appeal," *The Appraisal Journal*, October 1966, p. 593.

J. Mark Quinlivan, MAI, is a real estate appraiser and consultant with F. Robert Quinlivan, Coral Gables, Florida. He received his B.B.A. degree from the University of Notre Dame, M.B.A. degree from the University of Maryland, and J.D. degree from the University of Miami Law School.

Vance R. Johnson is Assistant Professor of Real Estate at Florida International University, Miami. He holds M.S. and B.S. degrees from Virginia Commonwealth University, Richmond, Virginia.

### DEFINING THE PROBLEM

The term "nonconforming use" is defined as:

"A use which was lawfully established and maintained but which, because of a subsequent change of a zoning ordinance, no longer conforms to the use regulations of the zone in which it is located. A nonconforming building, or nonconforming portion of the building, shall be deemed to constitute a nonconforming use of the land upon which it is located. Such uses preclude additions or changes without municipal approval."<sup>2</sup>

This definition suggests that a nonconforming use can be created by a change of zoning ordinance or by a partial taking of a site in an eminent domain action that results in the remaining building not conforming to the existing zoning ordinance as to parking requirements, minimum land size, density, setbacks, etc.

Zoning changes can create nonconforming-use properties in two ways. First, a zoning change from a lower to a higher use—such as a change from single-family to commercial use—creates a property in transition. In this case, the single-family residence does not conform to the current zoning ordinance, but is an underimprovement of the site. The single-family residence either will be removed almost immediately and the site improved to its highest and best use or it will be an interim use until it is more convenient to improve the site to its highest and best use. The valuation of a nonconforming-use property as an underimprovement is not difficult, and there is sufficient literature on the valuation of interim properties and properties in transition.

This article is concerned with the second type of nonconforming property—an overimproved property created either by downzoning or a partial taking in an eminent domain action. An overimproved property is created by a zoning change from higher to lower density caused by density reduction, floor area ratio reduction, setback requirement increases, increases in parking requirements, limitations on height, etc. Any of these changes reduces the maximum size of the building that can be constructed on the site. The term "overimproved property" describes a property that is overimproved for the site, based on the current zoning requirements, not overimproved for the neighborhood.

### TRADITIONAL APPROACHES IMBALANCED

It is difficult to appraise nonconforming-use properties because the relationships among the three traditional approaches to value—the cost approach on one hand, and the market and income approaches on the other hand—become distorted. If the cost approach is used, the site will have less value because of the decrease in use and, therefore, the value indication by

2. Byrl N. Boyce, *Real Estate Appraisal Terminology* (Chicago: American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers, 1975), p. 149.

this approach will be less than the value indication before the zoning change. Although the value indication by the cost approach generally will be less than the value indication before the zoning change, the income and market approaches may not be affected significantly. An investor will receive the same income stream before and after the zoning change; thus, the value indication by the income approach will remain relatively unchanged.

It may be argued that the quality of the income stream will be reduced by the downzoning. The owner now will have the risk that if the building is destroyed by fire or some other disaster, it cannot be replaced. Therefore, because the income stream could be terminated at some time in the future, the capitalization rate will be increased and the value indication by the income approach will be lower. But, if the risk of a fire or other disaster is low and the building can be fully insured, it is unlikely that an investor will require any measurable increase in the capitalization rate.

Market sales probably will not reflect a decrease in value even though the site value in an unimproved state might be reduced as a result of downzoning. An investor buys a total package of land and building and probably is unaware that fewer apartment units or less rentable area could be constructed if the site were vacant. An investor in an older building probably will be more concerned because he(she) may be faced with the replacement of the existing improvements in the near future.

For example, presume that a municipality enacted a zoning reduction from 25 units per acre to 10 units per acre as of January 1, 1979. A one-acre site is improved with a 25-unit rental apartment building constructed in 1976. Sales indicate land value of \$3,000 per unit when zoning density is 25 units per acre, and \$4,000 per unit when zoning density is 10 units per acre. The estimated total cost of the 25-unit building would be \$375,000, with physical depreciation for the three-year period estimated at \$25,000. The cost approach with and without the zoning change would be as follows:

	With Zoning Change	Without Zoning Change
Improvements (cost new)	\$375,000	\$375,000
Less: accrued depreciation	25,000	25,000
Depreciated value of improvements	350,000	350,000
Plus: land value	40,000	75,000
Value indication by cost approach	\$390,000	\$425,000

Market sales of existing apartment buildings located on similar downzoned land or in areas that have not been downzoned will support a value in line with the \$425,000 indication. The value indication by the income approach also will be in line with the \$425,000 indication, presuming there are no other unusual factors. In this example, there is a difference of \$35,000 between the values determined by the cost approach and the other two approaches.

#### MODIFICATION OF THE COST APPROACH

Many appraisers may ignore the concept of valuing the site as if vacant and able to be put to its highest and best use. These appraisers apparently believe that the existing improvements add to the site's value and, thus, they treat the site as improved. Appraisers have stated that the use of this theory is supported by the land residual technique.

Treating the site as improved will correct the imbalance between the cost approach and the other two approaches, but this method is not conceptually sound. It violates the basic principle that the site be valued as if vacant and able to be put to its highest and best use. Appraisers who have not studied the current zoning may be unaware that the property is a nonconforming-use property and, therefore, may treat the site as improved.

Another possible modification in the cost approach would be to reduce the rate of depreciation of the building because the zoning change has extended its economic life. In many areas, buildings that formerly would have been demolished remain in use after the density of the site has been lowered. Therefore, the amount of depreciation has been reduced. On the other hand, it has been argued that nonconforming properties have a shorter economic life because major repairs, alterations, and remodeling are not permitted. This is due to zoning ordinance provisions pertaining to nonconforming properties which restrict the type of alterations, size of alterations, or dollar amount of alterations (e.g., 20% of assessed value). However, experience has shown that few buildings—conforming or nonconforming—undergo extensive alterations. Therefore, the remaining economic life of nonconforming-use buildings will be at least as long as the lives of conforming-use buildings. Furthermore, it can be argued that nonconforming buildings have a longer remaining economic life than conforming buildings due to the economic advantages they enjoy as a result of downzoning; e.g., greater densities than currently allowed.

Although extending the economic life of the building may decrease its actual depreciation, there still will be a difference in the indications produced by the cost approach and the other two approaches. Even if we allow for no physical deterioration in that portion of the cost approach example cited above, which indicated a value of \$390,000 after the zoning change, there still will be a \$10,000 difference between the values indicated by the cost approach and the other two approaches. With the zoning change, the value indication by the cost approach will be \$415,000; the other two approaches indicate a value of \$425,000.

Murray's article addresses this same issue.<sup>3</sup> He cites an example of a single-family residence located on a 1,500-square-foot lot. A recently enacted zoning ordinance changes the minimum lot size to 7,500 square feet.

3. Murray, *op. cit.*, pp. 592-595.

The site, if vacant, will have only a nominal value. Mourray estimates the total property value to be \$4,000. However, from an abstraction of conforming residence sales, he values the building improvements at \$2,750 and the site improvements at \$100, with the site having a nominal value of \$100. These three components total \$2,950, but the market value is estimated to be \$4,000. Mourray calls this \$1,050 difference "combined-use variance." His calculation is:

Land, bare	\$ 100
Dwelling contribution	2,750
On-site improvement contribution	100
Combined-use variance	1,050
Estimated market value	<u>\$4,000</u>

Mourray recognizes that there is a bonus value (combined-use variance) to the property because it is allowed to remain as a nonconforming-use property so long as the building exists. This bonus value also can be called "variance value," "nonconforming-use value," "building bonus value," etc. These values are used in the cost approach or summation to equate the sum of the parts to market value.

#### POSITIVE ECONOMIC OBSOLESCENCE

In the authors' opinion, these labels do not describe the economic concept of bonus value properly. Bonus value will exist only so long as the building exists. Therefore, as the building improvements decrease in value, the bonus value also will decrease. Therefore, the bonus value is, in effect, a positive form of depreciation which declines in value as the building value decreases. Because the form of depreciation is caused by factors outside the property, the authors prefer to label this bonus value "positive economic obsolescence."

Although the term appears to be about as paradoxical as a "square circle," the concept accurately describes the situation created by a nonconforming-use property and, thus, is essential in the allocation of total property value. The concept of positive economic obsolescence recognizes both the bonus value to the improvements and the fact that the bonus decreases in value along with the building improvements.

It is not difficult to measure positive economic obsolescence. Generally, it will be a plug figure that is the difference between the market value of the nonconforming-use property as established by the market comparison approach and/or income approach and the value indication by the cost approach. We now can see that the value indication by the cost approach for a nonconforming-use property is not a reliable indicator of market value. The



income approach, the market comparison approach, or a combination of the two best indicates market value.

Using the concept of positive economic obsolescence and the procedure outlined for estimating this value, the cost approach calculation for the nonconforming-use property example cited previously is:

Improvements (cost new)		\$375,000
Less: accrued depreciation		
physical deterioration	-25,000	
positive economic obsolescence	+35,000	
Total	<u>10,000</u>	10,000
Depreciated value of improvements		<u>\$385,000</u>
Plus: land value		<u>40,000</u>
Value indication by cost approach		\$425,000

Why is it necessary to go through this procedure if the value indication by the cost approach, using an adjustment for positive economic obsolescence, is identical to the value indication by the cost approach basing the site value on the existing improvements? It may appear that once the appraiser recognizes that the property is a nonconforming-use property, he can use the income and market comparison approaches to value and not be concerned with the procedure of equating the cost approach with the other two approaches.

However, in appraising real estate there are many occasions when the market value must be broken down into land and improvements; e.g., for tax assessments, estimation of building depreciation, establishment of ground rent, condemnation appraising, etc. In these situations, the allocation of all the value components must be outlined and the concept of positive economic obsolescence must be recognized when applicable.

Appraisers must return to the basic concept that land be valued as if vacant and able to be put to its highest and best use. For convenience, many appraisers value the site of a nonconforming-use property as improved, believing that the building improvements can give additional value to the land.

However, there are times when the value of an improved site will be at issue; e.g., in estimating ground rent. The ground lease of a 300-unit apartment building may call for the site to be valued every 10 years, with the rent to be 10% of the market value of the site. However, a zoning ordinance may reduce to 150 the number of units that currently can be constructed on that site. The appraiser should be careful to appraise the site based on the number of units that can be constructed at the time of appraisal—not the actual number of units already on the site.

*CONCLUSION*

This is not intended to be an exhaustive discussion of the problems associated with appraising nonconforming-use properties. The authors have focused on one type of nonconforming-use property—the overimproved property—and have been concerned with recognizing the appraisal issue of nonconforming-use properties. They suggest the concept of positive economic obsolescence should be used when bonus value to the improvements is created by an overimproved nonconforming property. This concept is essential in the allocation of the total property value. The authors also urge appraisers to return, when necessary, to the basic concept of valuing the site as if vacant and able to be put to its highest and best use. We hope that this article will draw more attention to this neglected area of appraising.

○