# Committee on Resources

## Subcommittee on Forests & Forest Health

## Witness Statement

Written Testimony of

**NATIONAL FOREST HOMEOWNERS**

by Mary Clarke Ver Hoef

Chair

National Forest Homeowners

Government Liaison Committee

**TABLE OF CONTENTS**



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## Introduction

Madame 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 draftsperson 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.

## 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).

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