

APPEAL TEMPLATES:

**VIA CERTIFIED U.S. MAIL
RETURN RECEIPT REQUESTED**

(Address the appeal to the immediate supervisor of the person who issued your permit: if the permit was issued by a District Ranger, send the appeal to the Forest Supervisor; if your permit was issued by the Forest Supervisor, send your appeal to the Regional Forester)

Re: *Notice of Appeal*

Dear Mr./Ms. _____:

I am writing pursuant to 36 C.F.R. § 251.80 *et seq.* to appeal the issuance by _____ (name, title) of the _____ National Forest (*or National Recreation Area*) of a special use permit for a recreation residence ("Permit") to the undersigned. The Permit is dated _____. A copy of that Permit is attached. The information required by 36 C.F.R. § 251.90 for this Notice of Appeal is set forth below.

Appellant's name: *(Insert your name)*

Mailing address:

Daytime telephone:

Title of instrument: *(Insert the specific title on the first page of your permit such as "Term Special Use Permit for Recreation Residences")*

Date of Issuance:

Responsible Forest Service officer: *(Insert the name of Forest Service employee who issued the permit)*

Description and date of written decision being appealed and issues raised:

The written decision being appealed is the Permit referenced above and is dated _____. The Permit authorized the existence and use of a recreation residence on the _____ National Forest (*or National Recreation Area*), effective _____.

The Permit contains terms which are either not consistent with Forest Service policy, or are unduly burdensome and harmful to my use of the recreation residence.

Statement of the facts related to the dispute (tailor for your facts):

The Permit was issued on _____. The Permit allows for my restricted use of the recreation residence which is located within the permit area. I held a prior permit which authorized the use of the recreation residence. However, the new Permit contains certain terms which adversely impact my rights related to the use of my recreation residence. Those terms are described below.

Adverse impact on appellant and why the decision should be revised:

I own the recreation residence which is the subject of the Permit, the use of which is authorized pursuant to the Permit. However, the decision by _____ to issue the Permit with certain terms discussed below has caused an adverse impact to me.

(Describe the terms which you oppose and the adverse impact on you. If any of the statements below apply to your situation, you may want to consider including them. This is not meant to be an all inclusive or definitive list, but only examples of concerns that have been assembled for your information.)

(A) As the owner of a recreation residence, I should have been issued a permit with a 20-year term under the Forest Service's standard policy. However, the Permit which has been sent to me only has a term of one year. This shortened term will hinder my ability to make investments and improvements in my residence and associated structures. This hindrance could include making it more difficult to obtain financing for these efforts. In addition, this term makes little sense given that the Forest Service has to provide me with 10-years notice if it does not intend to allow my continued use of my recreational residence. It also does not provide for the opportunity to be given an in lieu lot in the event the use of the current lot is not allowed.

(B) The Permit includes a clause at Section VIII.C. which authorizes the immediate suspension of my permit "when necessary to protect public health or safety or the environment." While I do not object to the Forest Service having this authority when necessary, no further clarification is provided in the clause as to the degree or likelihood of any harm to public health, safety or the environment. In addition, this clause invites potential abuse of discretion as it contains minimal standards for review of a decision. As a result, this clause is improperly open-ended and could result in the unjustified suspension of my Permit. In addition, this clause could seriously reduce the sale value of my recreation residence were I to decide to offer it for sale.

(C) The Permit includes a clause at Section VII.A. which restricts my rental of my recreation residence to "a limited number of short, specific periods." However, no precise number of days is identified. My prior permit allowed for rental of the recreational residence for up to 15 days, which allowed me to defray my costs and to provide for additional recreation opportunities. See FSM 2721.23a. The new language would allow for even less rental days which would harm my ability to accomplish these goals.

(D) *The Permit includes a clause at Section I.G. which is far too broad and could include any law or regulation whether germane to the cabin program or not. It is particularly onerous when it is required by the Forest Service but not subject to enforcement by the Forest Service.*

(E) *The Permit includes a clause at Section I.H. which allows the Forest Service the right of access “to the permit area.” However, this clause is too broad, does not clarify that the right of access is only to the land and does not include the structure itself or other enclosures. The lack of specificity in the clause may lead to improper and unauthorized access to the structure itself and in addition, could allow activities to take place on the permitted area which would degrade the cabin experience for the permittee and could negatively impact the value of the cabin.*

(F) *The Permit includes a clause, at Section III. A., in which the wording is more appropriate for a commercial enterprise than for the level of activities of a cabin owner or relatively low value improvements that are possible within the confines of the program.*

(G) *The Permit includes a statement at Section IV.A. that it is not a contract. However, where Forest Service term permits have been reviewed by courts, they have been determined to be contracts. Therefore, the Forest Service may improperly try to assert that this language constitutes a waiver by the permit holder of any contract rights under this document. That effort would be improper, misleading and contradicts case law.*

In addition to the above, you may want to include some additional language to preserve any right you may to the extent that your permit is viewed as a contract with the Forest Service, notwithstanding permit language to the contrary. The Forest Service appeal regulations state that the appeal process does not apply when the relief sought is the “reformation of a contract”. 36 CFR 251.83(j). However, Recreation Residence permits contain all the elements of a legal contract under applicable federal law. Because a request to change that permit could be viewed as seeking reformation of a contract, out of an abundance of caution, cabin owners may want to state in any appeal that the appeal does not constitute a waiver of the cabin owner’s right to seek a reformation of contract.

(H) *The Permit includes a clause at Section IV.D that no longer specifies a time period to complete the analysis and notify the permit holder. It does not define “substantially damaged” nor what improvement if not rebuilt would terminate the permit....would an outhouse, garage or storage shed meet the definition and jeopardize the permit?*

(I) *The Permit includes a statement at Section IV.F 3 regarding “...that liability shall not include reasonable and ordinary wear and tear. However, this language is omitted in the statement at Section IV.F.2. This limitation on liability should be the same whether inside or outside the permit area.*

(J) *The Permit includes a clause at Section I.F. that gives the authorized officer total discretion to amend the Permit at any time during the 20 year term. As a result, this clause is improperly open-ended and could result in the unjustified amendment of the Permit or the altering of terms without consequences. Both could negatively affect the permittee’s authorization to use and occupy the permitted area. The unilateral nature of the Permit is being*

questioned when such a large personal property investment of the cabin owner is affected by its terms.

(K) The Permit includes a statement at Section VIII.B. that does not define what an “equitable amount” means nor how it is derived in determining the amount the Forest Service is obligated to pay a cabin owner in the event of a public interest revocation. This amount should not be left to interpretation by either party. The lack of specificity in defining this value amount for cabin owner’s improvements could lead to costly appeals and legal challenges.

(L) The Permit includes a clause at Section X.A. which no longer specifies a time period. The use of the word “reasonable” is totally subjective and gives extreme discretion to the authorized Forest Service officer.

(M) The Permit does not contain the same terms as my prior permit, contrary to the Forest Service’s prior assurances and representations. These differences are material and detrimental to my rights. Because of this fact, the Permit constitutes a violation of the agreement between myself and the Forest Service.

Appellant’s efforts to resolve the issues being appealed:

(Insert a description of your contacts and efforts with local Forest Service people to resolve these issues.) In addition, I have, acting through National Forest Homeowners, made efforts to have the Permit terms modified. However, those efforts have not been successful to date.

Statement of relief being sought:

I am requesting that the deciding officer’s decision to issue the Permit be revised to omit and/or correct the terms identified above. I further request that a new, revised permit be issued consistent with this appeal.

APPELLANT’S REQUEST FOR A STAY OF THE DECISION(S) PENDING APPEAL:

If the permit or specific provision threatens the cabin owner with irreparable harm, for example, removal of a structure or an unreasonable restriction on use, you may wish to include in the appeal a written request for a stay pending the resolution of the appeal. This can be included with the filing of an appeal or any time your appeal is pending.

A written justification of the need for a stay must include:

- a description of the action you want to be stopped.*
- specific and detailed reasons why the stay should be granted, including the specific adverse effects you will incur*
- harmful site-specific impacts which may occur if the decision is not stopped, and*
- whether the impacts would prevent a meaningful decision on the merits.*

Pursuant to 36 C.F.R. § 251.91, I request a stay of the deciding officer's revocation decision while this appeal is pending. As noted above, the harmful effects of the deciding officer's decision will occur during the pendency of this appeal. Therefore, I respectfully request that the terms described above not be implemented during the appeal period.

Sincerely,

(your name)

cc (w/ enclosures):

(you must send a copy to the Forest Service employee who issued your permit)

National Forest Homeowners