

**DECISION NOTICE AND
FINDING OF NO SIGNIFICANT IMPACT**

Mill Creek Canyon Recreation Residences

USDA-Forest Service

**Salt Lake Ranger District, Uinta-Wasatch-Cache National Forest
Salt Lake County, Utah**

Decision and Reasons for the Decision

Background

This document details my decision regarding continued recreation residence use for 70 existing summer homes and associated facilities located in Mill Creek Canyon, in Salt Lake County. My decision is based on an environmental analysis for this proposal documented in an Environmental Assessment (EA) and released concurrent with this decision.

Recreation residences, sometimes referred to as summer homes, are a historic and well-recognized recreation experience for thousands of National Forest visitors around the country. Recreation residences on National Forest System (NFS) lands were first authorized in 1915 to encourage recreation in National Forests. These cabins are privately owned, but are set on NFS lands and thus require agency authorization for the occupancy and use. This authorization takes the form of a special use permit issued for each lot where a summer home is located.

The first special use permit for a summer home in Mill Creek Canyon was issued in the 1920s. Construction of developed public recreation sites in Mill Creek, such as picnic areas, also began at about the same time. By the 1950s, most of the public recreation sites and summer homes were in place. Generally, summer home groups are organized and administrated as "tracts" and each tract usually has a homeowner's association, elected representatives, and works with the Forest Service on issues of community interest. In Mill Creek Canyon there are three separate tracts: Porter Fork, Elbow Fork, and Firs. In these tracts, there are 45, 1, and 24 summer home lots, respectively. Over the years since their establishment, Mill Creek Canyon summer homes were authorized under a series of special use permits. The 20-year term for the current permits for all of these recreation residences expires on December 31, 2008.

Forest Service direction regarding continued recreation residence use is included in both legislation and agency policy. The Cabin User Fee Fairness Act of 2000 directed the Forest Service "to ensure to the maximum extent practicable, that the NFS recreation residence program is managed to preserve the opportunity for individual and family-oriented recreation..." In addition, the Forest Service Manual (FSM 2347.1) states the following:

Recreation residences are a valid use of National Forest System lands. They provide a unique recreation experience to a large number of owners of recreation residences, their families, and guests. To the maximum extent practicable, the recreation residence program shall be managed to preserve the opportunity it provides for individual and family-oriented recreation. It is Forest Service direction to continue recreation residence use and to work in partnership with holders of these permits to maximize the recreational benefits of recreation residences.

The 2003 Forest Land and Resource Management Plan for the Wasatch-Cache National Forest (Forest Plan) calls for the recreation residence program to continue and for the Forest Service to work in partnership with holders of these permits to maximize the recreation benefits. A host of requirements are a part of this use of the National Forest. For instance, summer homes must be used at least 15 days per year, but cannot be used as a principal residence. In addition, each special use permit requires that homeowners comply with all applicable laws, regulations, and ordinances of Federal, State, and local government. Maintenance requirements for each recreation residence is detailed in an Operation and Maintenance Plan (O&M Plan), which is a part of each special use permit.

Summer home permit holders are also required to comply with the Wasatch-Cache National Forest Recreation Residence Administrative Guide (Administrative Guide), which includes detailed provisions for the size of various structures, measures for environmental protection, etc. The initial version of the Administrative Guide was distributed to permit holders in 2005 for comment and sent out in final form in February of 2006. The Administrative Guide formed the basis for much of the compliance review that is summarized in Appendices C and D of the EA. As this EA was being completed, the Administrative Guide was updated. The most significant change between the two versions was the establishment of Riparian Management Objectives for summer homes on the Wasatch-Cache National Forest, which is included as Table 1 in the EA.

In the sections which follow, this document outlines my decision regarding continued summer home use in Mill Creek Canyon and a number of connected actions, summarizes the rationale for my decision, lists mitigation measures that will be applied to implement the decision, and includes alternatives that were considered in the environmental analysis and in reaching my decision. In addition, this Decision Notice summarizes the public involvement effort that was an important part of the EA process; describes why no significant environmental impacts would likely occur; documents how the decision would be consistent with applicable laws, regulations, and policies; and provides information about the administrative review opportunity that is available for those who may disagree with the decision.

Decision

Chapter 1 of the EA details the purpose and need for this proposal (Proposed Action) and includes a discussion of the elements of the decision that will be made. Based on the analysis in the EA, my decision is to allow continued recreation residence use on the 70 lots in Mill Creek Canyon. This is consistent with agency policy detailed in Forest Service

Manual, sections 2721.23(a) through 2721.23(j) and with the broad policy governing recreation residences and permitted uses set forth in FSM 2347.1 and in Title 36 of the Code of Federal Regulations (36 CFR 251.50).

As my decision is implemented, the reissuance of individual permits for each lot will depend on whether the holder is in compliance with the terms and conditions of their existing authorization. Those who are will be issued a new 20-year special use authorization expiring on December 31, 2028. In cases where the lot is not in compliance with permit requirements by December 31, 2008, but where the holder is making substantial efforts towards that end, a temporary permit will be issued. In this case, a one-year permit will be available to help the owner complete the work that is needed for full compliance (FSM 2721.23a, (9)). Assuming they are able to achieve compliance within that period, these permit holders will then be issued a permit for the remainder of the 20-year term. No temporary permit will be issued to those holders who do not show due diligence in achieving compliance. In that scenario, the permit will expire on December 31, 2008 and the holder will be required to submit a plan for removal of all improvements from the site and restoration of the lot.

Inspections conducted over the past several seasons indicate that considerable work needs to be done in order for all homeowners to achieve compliance and be eligible for a new long-term special use permit. All permittees are urged to carefully review Appendices C and D in the EA, as well as previous correspondence from the Forest Service, so they understand and can complete the work that may need to be done during the summer of 2008. Recreation residence permit holders who do not achieve compliance within these timeframes will be required to submit a plan to remove their improvements from the National Forest and restore the site to a condition acceptable to the Forest Service, and then do so (FSM 2721.23(j)).

In some instances, improvements on recreation residence lots do not conform to the Administrative Guide even though many of these structures and facilities have existed for years. This situation is a result of insufficient permit administration by the Forest Service, permit holders overlooking the requirement to obtain Forest Service approval before constructing facilities, and development of the first Administrative Guide in 2005. Addressing these *nonconforming improvements* will be a significant part of the job of reissuing the new 20-year authorizations.

Depending on the circumstances, nonconforming improvements may be *conditionally accepted* in new special use permits. This means that a structure will continue to be allowed on a lot, but that it must be removed or modified at some point in the future. In most cases, this will be when the improvement is destroyed, or is substantially damaged or deteriorated. At that point, the structure must be removed entirely, or modified in such a way as to comply with all Forest Service requirements. In general, we will conditionally approve structures when permit holders are able to produce written documentation of prior Forest Service approval of what is now a nonconforming improvement. Other cases may exist where the presence of a nonconforming improvement is creating an impact to natural resources and the facility can be removed or modified with modest effort and limited site

disturbance. In those instances, my decision will require removal or modification before a new authorization is granted.

A common example of conditional acceptance will be when the combined area of decks, walkways, and patios exceeds the 500-sq. ft. limit specified in the Administrative Guide. In most of these situations, these facilities will be added to the new permits as conditionally accepted. At the point in the future when one or more of these improvements are destroyed or substantially damaged or deteriorated, their overall size would need to be reduced to 500 sq. ft. or less.

As a part of the EA process, two lots were identified in the Porter Fork Tract which could be used to relocate existing recreation residences when the opportunity presents itself. Since many of the homes in the tract are located in or adjacent to riparian areas, in some instances relocation could help to improve watershed and aquatic conditions. Based on the analysis in the EA, my decision is to designate two “in-lieu lots” in Porter Fork to serve as replacements for others in the tract when the opportunity presents itself.

Finally, my decision also includes the approval to authorize, or modify the authorization for, a number of existing tract facilities.

Firs

- Update the tract’s 1949 special use permit for the road and water system to include modern terms and conditions and expand the authorization to include existing facilities (including two bridges and gates, signs, and several short spur roads).
- Issue a separate permit for the tract’s existing water system.
- Authorize a number of existing association improvements, such as short trail segment, a bench, and a group meeting area/sports court in a tract special use permit.

Porter Fork

- Authorize use and maintenance of Porter Fork Road and several short internal roads to the Porter Fork Summer Homeowners Association. The authorization would include maintenance of associated bridges, culverts, and gates.
- Authorize the existing, updated community water system under a new special use permit with a term that coincides with the term for the summer homes.

Elbow Fork

- Include in the summer home permit an authorization for maintaining and replacing, if necessary in the future, the existing bridge over Mill Creek.
- Authorize the use of National Forest lands for the existing water system for the summer home in a separate special use permit, contingent on approval for the water use from Salt Lake City Department of Public Utilities, or proof of a State water right.

Rationale

I have carefully considered the environmental analysis contained in the EA in making my decision. It is clear that summer homes, particularly some of those located in the Porter Fork Tract, have had an impact on the stream, aquatic habitat, and adjoining riparian area. However, in the past several years homeowners have made a number of improvements to reduce their impact. Porter Fork homeowners have installed a new water system to serve their cabins with one that is more efficient in its use of water and have removed most remnants of the old system that was laid in the stream channel. Likewise, other homeowners have ceased cutting streamside vegetation and have removed a number of diversions and small dams from the stream. Other in- and over-stream structures will be removed prior to issuance of the new long term permits to ensure that continued recreation residence use is consistent with Forest Service requirements.

Application of the Administrative Guide should help to assure that the impact of Mill Creek Canyon summer homes will be minimized in the future. The majority of the recreation residences in the canyon are located near streams and on adjacent land designated for riparian area protection. Allowing summer home use to continue and yet preserving the ecologic values will require close attention by both permit holders and the Forest Service. In most cases, this will mean that footprint for summer homes cannot be expanded, even if the current interior living space is below the 1,500 square feet maximum indicated in the Administrative Guide. One exception to the maximum area for summer homes will be for the installation of indoor toilets for those homes that currently have only an outdoor vault toilet.

Some confusion has existed in the past several years regarding what type of wastewater systems would comply with requirements of the Salt Lake Valley Health Department (SLVHD). Their regulations (HR-3, Subpart 4.4.2 and HR-13, Subpart 4.8.1) and Utah's Onsite Wastewater Rule (R317-4) require all summer homes to have an indoor flush toilet. In addition, outdoor privies or vaults are prohibited and if any exist they must be removed, or rendered inoperable. Since it is not in Salt Lake City's culinary watershed, Mill Creek Canyon cabins may have a septic tank, connected to a leach field for their wastewater disposal system. As many as 23 permit holders will need to undertake work this summer in order to comply with these requirements. In some cases, this may extend beyond the expiration date of the current permits. In those instances, we will be willing to grant a one-year permit to allow additional time to comply with these requirements for wastewater systems, so long as the permit holder is making a good faith effort to comply.

Continued recreation residence use within the three tracts will mean that some impacts to wildlife and their habitat and vegetation will continue. However, those impacts are relatively minor and the fact that Mill Creek Canyon supports intense recreation of other types means many of these impacts would occur even if summer homes were no longer there.

To some extent, the presence of the summer homes has an effect on the recreation experience for other visitors. While recreation residence permits do not allow exclusive use of the lots on which the cabins are located, their presence probably diminishes the

experience for some visitors who hike or bike through or past a tract. Many other visitors likely assume the summer homes are on private land, or have become so accustomed to them that it's not a concern. Perhaps more importantly, homeowner motor vehicle traffic does raise some safety concerns for hikers and bikers. However, with the mitigation measures that have been identified the summer safety concern should be minimized.

Winter access to recreation residences in the Mill Creek Canyon tracts presents a different set of challenges. Historically, a relatively small number of homeowners use their cabins in the winter. Those who do typically travel to their homes on skis or snowshoes, or in some instances use a snowmobile or snowcat. Since Porter Fork Road is closed year-long to motorized travel and Mill Creek Canyon Road is closed beyond Maple Grove in the winter, requests for motorized access to summer homes has been approved by the Forest Service on a case-by-case basis. Increasing requests for winter motorized access by homeowners and the relatively heavy use these routes experience by other recreationists does raise concern about conflicts and potential safety issues. In the near term, requests for winter motorized access will continue to be reviewed and approved on a case-by-case basis. However, it is uncertain whether winter motorized access to recreation residences can continue to be allowed in the long term.

One of the recurring issues raised by the Interdisciplinary Team and in public comments on the Preliminary EA related to impacts on streams and riparian areas. Designation of two in-lieu lots should help reduce the overall environmental impact of summer homes in Porter Fork where a number of homes are located very near or within these important areas. Over time and as the opportunity presents itself, these two lots will be used to relocate two homes to a location more removed from the stream and with fewer impacts. They will not be used to increase the number of new summer homes or lots in the tract.

I also considered the impact of authorizing other facilities associated with the summer home. These roads, water systems, and other improvements already exist. Properly authorizing their use will have no additional environmental impact, but will help to assure that the use can be better administered and monitored.

Finally, I value the importance of the recreation opportunity provided by these summer homes. These homes have provided family-oriented outdoor recreation for generations. Recognizing this, agency policy is to continue to allow this use within existing tracts as much possible. I believe implementation of my decision will accomplish this, while at the same time addressing some of adverse effects summer homes have had over the years.

Mitigation and Implementation Measures

A number of measures surfaced during the EA process which will help to minimize or avoid many of the impacts of recreation residences. These measures are part of my decision and will become a part of the new authorizations. Many of these requirements are provisions of the Administrative Guide, but are listed below also because of their importance.

- Before new, 20-year special use permits are issued, ensure that the structures and other improvements on the lot comply with all Forest Service requirements, including the Administrative Guide and Riparian Management Objectives for summer homes.
- Prior to granting new long term authorizations, ensure that summer home permittees comply with applicable State and local laws and ordinances. This includes requirements of Salt Lake City Department of Public Utilities for water use and the Salt Lake Valley Health Department for sewage and septic systems.
- Recreation residence owners who do not comply with Forest Service, State, and local government requirements will not be approved for 20-year special use permits and will be required to remove their facilities and restore the site to a condition acceptable to the Forest Service.
- All recreation residence permittees will be provided a copy of the Administrative Guide upon being issued a new permit. Adherence to the Guide will be a required element in the new permits that are issued.
- In some cases summer homes and appurtenant facilities such as decks, patios, walk-ways, and storage sheds may be expanded or rebuilt, up to the limits established in the Administrative Guide. However, the decision whether to allow expansion up to these limits will be based on a case-by-case assessment of factors on each lot. When facilities are located in riparian zones or other sensitive areas, they will be limited to the footprint of the current facilities.
- Improvements listed as "conditionally accepted" on the new special use permits may be required to be removed when the structure is destroyed, substantially damaged or deteriorated, or upon change in ownership.
- Provide signs warning hikers and bikers about homeowner vehicle traffic on roads.
- Operation and Maintenance Plans (O&M Plans) will be developed by the Forest Service permit administrator and each permit holder. The O&M Plan will cover individual lot improvements and winter access, if determined appropriate. These O&M Plans will require that each permittee to: (a) comply with the Administrative Guide; (b) follow requirements noted in Forest Service lot inspections and complete corrective action by scheduled completion dates; and (c) ensure that all current and future improvements be approved by the Forest Service in writing in advance.
- O&M Plans will also be developed for the various tract improvements that currently are, or will be authorized, as a part of this decision. These authorizations and O&M Plans will be issued to the respective tract association and signed by a responsible representative.
- All O&M Plans, both for individual lots and for tract improvements, will include the requirement to use native grass and forb seed mixes for re-vegetation of all disturbed areas within tracts. The use of non-native vegetation will not be approved.
- In the Firs Tract, road and parking area drainage work will be completed in the area around lots 1 – 8, and 19. Further vegetation cutting below lot 1 will be not allowed.

- During on-site inspections, or annual summer home association meetings, or upon request from a permit holder, the permit administrator will discuss and provide fire hazard mitigation and prevention information.

Other Alternatives Considered

In addition to the Proposed Action, I also considered a number of other alternatives which are described in the EA. Some of these were eliminated from detailed study because they did not meet the purpose and need for action, were inconsistent with agency policy, or were otherwise outside the scope of the review. Among these were suggestions to approve recreation residence use for terms less than 10 years, or with different terms and conditions. The option of not approving continued recreation residence use was examined in detail in the EA as the No Action Alternative. I did not select this alternative because it would have eliminated an important recreation opportunity, would be contrary to agency policy, and it could not be demonstrated that discontinuation was in the public interest.

Public Involvement

Summer home permit holders were informed about the upcoming permit reissuance process in annual tract association meetings beginning in 2003. About the same time, meetings were held with staff from local government agencies concerning water and sanitation issues that could be problematic to the upcoming permit reissuance process. Over the years since 2003, summer home permit holders were notified specifically what improvements would need to be removed or modified in order to be eligible to allow continued recreation residence use on their lots.

In March 2006, a scoping letter was sent to agencies, organizations, permit holders, and members of the public soliciting comment on the proposal to allow continued recreation residence use of the Mill Creek Canyon summer homes. On June 28, 2007, a Preliminary Environmental Assessment was released for public comment. The comments received, together with an agency response, are included in Appendix B in the EA.

Finding of No Significant Impact

After considering the environmental effects associated with continued recreation residence use in Mill Creek Canyon, I have determined that my decision will not have a significant effect on the quality of the human environment. Thus, an environmental impact statement will not be prepared. I base this finding on the following:

1. The conclusion that there will be no significant environmental effects is not biased by the beneficial effects of the action.
2. There will be no significant effects to public health and safety.
3. There will be no significant effects to unique characteristics of the area and this decision will not affect cultural resources in the area. In addition, there are no parklands, or prime farm lands in the area.

4. The effects on the quality of the human environment are not highly controversial. The environmental analysis shows that the effects of my decision do not involve unique or unknown risks.
5. This decision will not set a precedent for future actions with significant effects.
6. The cumulative impacts of my decision are not significant.
7. This decision will have no significant effects on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places. This action will not cause loss or destruction of significant scientific, cultural, or historic resources.
8. This decision will not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
9. This decision will not violate Federal, State, or local laws or their requirements for protection of the environment.

Findings Required by Other Laws and Regulations

Clean Water Act of December 27, 1977 – The Clean Water Act requires each State to implement its own water quality standards. The State of Utah’s Water Quality Anti-degradation Policy requires maintenance of water quality to protect existing in-stream Beneficial Uses on streams designated as Category 1 High Quality Water. All surface waters geographically located within the boundaries of the Wasatch-Cache National Forest, whether on public or private lands, are designated as Category 1 High Quality Water. My decision will not affect the quality of the water flowing through the area.

Executive Order 11990 of May 24, 1977 – This order requires the Forest Service to take action to minimize destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands. In compliance with this order, Forest Service direction requires that analyses be completed to determine whether adverse impacts would result. My decision will have no adverse effects to wetlands located within the project area and therefore is in compliance with E.O. 11990.

Executive Order 11988 of May 24, 1977 – This order requires the Forest Service to provide leadership and take action to: (1) minimize adverse impacts associated with occupancy and modification of floodplains and reduce risk of flood loss; (2) minimize impacts of floods on human safety, health and welfare; and (3) restore and preserve natural and beneficial values served by floodplains. My decision will have no adverse effects to floodplains.

Endangered Species Act of December 28, 1973 – This Act directs that all Federal departments and agencies shall seek to conserve endangered, and threatened (and proposed) species of fish, wildlife, and plants. This obligation is further clarified in a National Interagency Memorandum of Agreement (August 30, 2000) that articulates a shared mission to “...enhance conservation of imperiled species while delivering appropriate goods and services provided by the lands and resources.” Based on the information disclosed in the Biological Assessment for this proposal, it has been

determined that this decision will have no adverse effects to populations of endangered, and threatened (and proposed) species of fish, wildlife, and plants

Executive Order 13186 of January 10, 2001 – This Executive Order relates to conservation of migratory bird species. My decision is in compliance with this Executive Order.

Executive Order 13112 of February 3, 1999 – E.O. 13112 directs that Federal agencies should not authorize any activities that would increase the spread of invasive plant and animal species. This decision will not increase the spread of invasive species.

American Antiquities Act of 1906 and the National Historic Preservation Act of 1966 – There would be no effect to any historic properties as a result of this decision.

Prime Farmland, Rangeland and Forest Land (Secretary of Agriculture Memorandum 1827) – This are no prime farmlands or grazing allotments within the project area.

Civil Rights Act of July 2, 1964 – There will be no adverse effects to groups or individuals protected under the Federal Civil Rights Act as a result of this decision.

Executive Order 12898 of February 16, 1994 “Federal Actions to Address Environmental Justice on Minority Populations and Low-income Populations” – This order requires Federal agencies, to the extent practicable and permitted by law, to make achieving environmental justice part of its mission by identifying and addressing as appropriate disproportionately high and adverse human health effects, of its programs and policies and activities on minorities and low-income populations in the United States and its territorial possessions. No minorities and low-income populations would be affected by this decision.

Administrative Review and Appeal Opportunities

This decision is subject to administrative review (appeal) pursuant to 36 CFR Part 215. The appeal must be filed (regular mail, fax, email, hand-delivery, or express delivery) with the Appeal Deciding Officer at: *Appeal Deciding Officer, Harv Forsgren, Regional Forester, 324 25th Street, Ogden, Utah 84401*; or by fax to 801-625-5277. The office business hours for those submitting hand-delivered appeals are: 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. Electronic appeals must be submitted in a format such as an email message, plain text (.txt), rich text format (.rtf), and Word (.doc) to: appeals-intermtn-regional-office@fs.fed.us. In cases where no identifiable name is attached to an electronic message, a verification of identity will be required. A scanned signature is one way to provide verification. Individuals or organizations who submitted comments during the comment period specified at 215.6 may appeal this decision. The notice of appeal must meet the appeal content requirements at 36 CFR 215.14.

Appeals submitted pursuant to 36 CFR Part 215, including attachments, must be filed within 45 days from the publication date of this notice in the Salt Lake Tribune, the

newspaper of record. Attachments received after the 45-day appeal period will not be considered. The publication date in the Salt Lake Tribune, the newspaper of record, is the exclusive means for calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframe information provided by any other source.

Implementation Date

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, five business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15th business day following the date of the last appeal disposition.

Contact

For additional information concerning this decision, or the Forest Service appeal process, contact: Al Soucie, Special Uses Manager, Uinta-Wasatch-Cache National Forest, 125 S. State Street, #8236, Salt Lake City, UT 84138; ph. (801) 236-3450, email - asoucie@fs.fed.us.

/s/ Brian Ferebee
BRIAN FEREBBEE
Acting Forest Supervisor

May 7, 2008
Date

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