

Understanding Your Cabin Permit (and other useful information)

**Workshop Session for
NFH Annual Conference,
May 3-4, 2019
San Diego, California**

Understanding Your Cabin Permit (and other useful information)

What are we going to cover?

- 9 key clauses in your cabin permit;
- R5 & R6 Cabin Supplements;
- What to do when issues arise; and
- Your other questions.

Term Special Use Permit for Recreation Residences

- Current Version: FS 2700-5A (VER 03/17)
- Likely to change, some language being discussed.
- Cabin Fee Act Required Changes:
 - Fee language has been changed
 - Limited Access language has not

1. What improvements are included in addition to your cabin?

Permit Page 1: List of Authorized Improvements

- Cabin 780 sq.ft. (38.9' x 20.1') One story
- Deck 1; 191 sq. ft
- Deck 2; 71 sq. ft.
- Septic tank
- Water; DWP
- Utilities - Electricity and telephone

- Improvements were carefully detailed in 2007 permit renewals.
- Errors will need to be thoroughly documented.

2. Who can use your cabin and for what?

Permit Page 1, Section I.C. Authorized Use

“This permit authorizes only noncommercial recreational use by the holder’s immediate family and the holder’s non-paying guests, other than incidental rental that has prior written approval from the authorized officer pursuant to clause VII.A.”

3. How long does the permit last, then what happens?

Permit Page 2, Section I.E. Term

D. TERM. This permit shall expire at midnight on 12/31/2028.

- Most permits will expire in 2028, though some permits expire 2026 – 2030.
- What happens then?
 - Continuation Review (Is holder and residence in compliance?)
 - Consistency Determination (Does RR use comply with Forest Mgmt Plan?)
 - If both “yes” new 20-Year Permit.

4. It's my lot, right?

Permit Page 2, Section I.I. Non-Exclusive Use

“The use and occupancy authorized by this permit are not exclusive. The Forest Service reserves the right of access to the permit area, including a continuing right of physical entry to the permit area for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation. The Forest Service reserves the right to allow others to use the permit area in any way that is not inconsistent with the holder’s rights and privileges under this permit, after consultation with all parties involved.”

[Underlining added]

It's my lot, right? - Continued

Does this give public the right to hike, picnic or camp on your cabin lot?

- Hike? Yes. Public has free access to NFS lands.
- Picnic? Yes, but not on decks or patios without permission.
- Camp? No. Public not allowed to camp within $\frac{1}{4}$ mile of any structure on NFS lands.

5. What activities does my permit allow?

Permit Page 2, Section II.A. Limitations on Use

“This permit authorizes only occupancy of a recreation residence. Nothing in this permit gives or implies permission to build or maintain any structure or improvement or to conduct any activity, unless specifically authorized by this permit....”

- **Specific approval in writing is needed for anything other than occupancy.**

6. How much – or little – can I use my cabin?

Permit Page 3, Section III.B. Minimum Occupancy and Prohibition on Full-Time Occupancy

“The permitted improvements shall be occupied at least 15 days each year, unless otherwise authorized in writing, but shall not be used as a full-time residence. Use of the permitted improvements as a principal place of residence is prohibited and shall be grounds for revocation of this permit.”

- But what are the definitions of “full-time residence” and “principal place of residence”?

6. How much – or little – can I use my cabin? -- Continued

Region 5 Forest Service Handbook Supplement
2709.11-2016-2

- “Supplements” also exist in R6 [OR+WA], R4[NV,UT,ID] and some forests
- Supplements provide important detail on construction, maintenance and use of Rec Residences

6. How much – or little – can I use my cabin? -- Continued

Region 5 Forest Service Handbook Supplement
2709.11-2016-2, Section 41.05 Definitions

“Principal Residence. The principal residence can be a house, apartment, mobile home or other reasonable domicile, either owned or rented, and must be open and available to the permit holder at all times. The principal residence cannot be simply an address used to give the appearance of living in a home elsewhere. For example, it must be the place where the permit holder routinely receives mail, is registered to vote, from which children attend school, or from where the permit holder normally commutes to work.”

7. What is a “Permit” anyway?

Permit Page 4, Section IV.A. Legal Effect of the Permit

“This permit, which is revocable and terminable, is not a contract or a lease, but rather a federal license... This permit does not constitute a contract for purposes of the Contract Disputes Act, 41 U.S.C. 601. The permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.”

- Issue: No definition of “federal license”
- Neither “lease” nor “contract”

8. What is “Incidental Rental”?

Permit Page 11, Section VII.A. Incidental Rental

“With prior written approval from the authorized officer, the holder may rent the recreation residence covered by this permit for a limited number of short, specific periods for recreational purposes, provided the rental does not change the character or use of the authorized improvements from noncommercial to commercial. The rental agreement must be in writing and must provide that the holder remains responsible for compliance with all the terms of this permit. A copy of the rental agreement shall be provided to the authorized officer.”

- Does this allow rental through Airbnb?

8. What is “Incidental Rental”? -- Continued

Region 5 Forest Service Handbook Supplement
2709.11-2016-2, Section 41.23f.3

41.23f.3

“Rental Restrictions: When written approval by the authorized officer is received in advance, the permitted improvements may be rented for recreational use. Rental for commercial use is prohibited. If authorized, renting shall be limited to no more than 14 days per year, and must be addressed in the O&M Plan.”

9. So I want to sell my cabin...

Permit Page 11, Section VII.C. Prospective Purchasers and Transferees

“When the holder is contemplating a sale of the recreation residence authorized by this permit, the holder shall notify the authorized officer and provide a copy of this permit to the prospective purchaser or transferee. The holder shall not represent that the Forest Service will issue a new permit to the prospective purchaser or transferee. Any purchaser or transferee must apply for and obtain a new permit from the Forest Service and must meet the qualification for issuance of an authorization by demonstrating sole ownership to be held by an individual, married couple, or living/family trust.”

What can I find in the Cabin Supplement?

Example 1: Correction of Conditionally-accepted Improvements

“As opportunities develop during replacement, maintenance or reconstruction affecting the noncompliant issue, National Forest staff should bring improvements and structures into compliance with these standards.” [41.23e.3]

What can I find in the Cabin Supplement?

Example 2: How large can a cabin be? Does an over-size cabin have to be reduced on sale?

“When approving an addition...or during new construction or reconstruction of a cabin, limit floor space to a maximum of 1,400 square feet...

Reduction in size of existing authorized cabins is not required prior to permit issuance.” [41.23g.2.b]

What can I find in the Cabin Supplement?

Example 3: How about decks: what's the maximum size?

“Decks, porches and patios must be attached to the residence. Combined deck, porch and patio size (including walkways) is limited to 60 percent of the primary structure first floor square footage (the cabin footprint). Small (cabins) may be authorized up to 250 square feet...” [41.23g.2.d]

What can I find in the Cabin Supplement?

Example 4: My deck exceeds this 60% rule, does it have to be reduced?

“Do not authorize new construction or reconstruction of decks/porches/patios with a combined size exceeding 800 square feet.”

[41.23g.2.d]

When Issues Arise

Throughout...

- **Get It In Writing**
- **Be Polite**
- **Be Persistent**
- **Maintain Compliance in all other respects**

When Issues Arise

1. Get it in Writing

- Request clarification of issue & decision
- Request citation and copy of applicable rule/regulation

When Issues Arise

2. Document Your Side of the Issue

- Copies of written approvals
- Photos documenting when improvement was constructed
- Statements of prior owners, neighbors, contractors

When Issues Arise

3. Get Support For Your Position

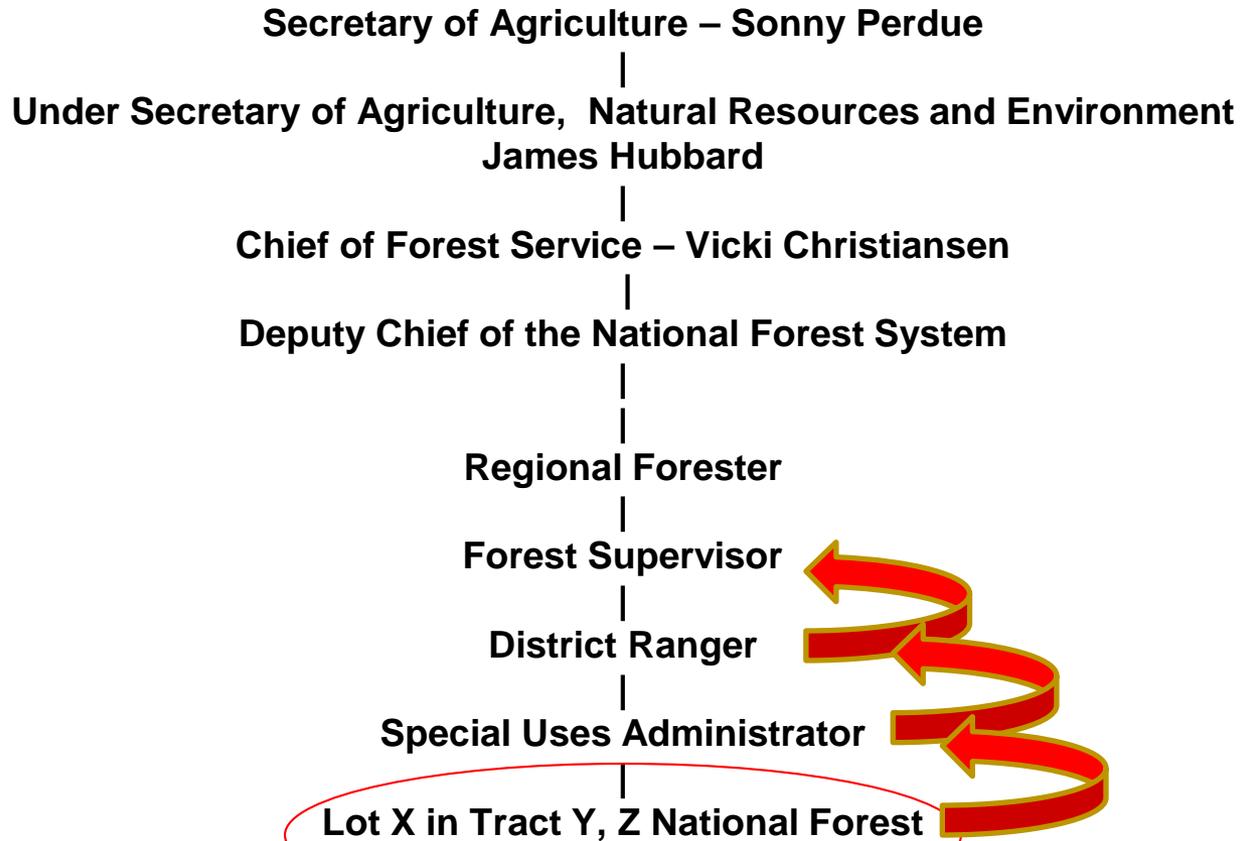
- Cabin Neighbors**
- Tract Association**
- Regional, State organizations**
- NFH**

When Issues Arise

4. Appeal Decision Within Forest Service

- Request reconsideration
- Formally appeal “up-the-line”

Forest Service Organization



When Issues Arise

4. Appeal Decision Within Forest Service

- Request reconsideration
- Formally appeal “up-the-line”
- Document discussions and meetings

When Issues Arise

5. If All Else Fails, Go Outside the System

- Congressman
- Others [Media, Historic Society, etc.]
- Copy NFH and others on letters

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