

University of Oregon at Bend

The History of the Recreation Residence Program on  
the Deschutes National Forest

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For her entire life, Dale Tigner's summers have included time spent at her family cabin at Elk Lake, a small mountain lake in the Cascade Range near Bend, Oregon. The cabin, built by her grandfather in the 1930s, is still very much in its original condition. It is small, rustic, and primitive – there is no electricity or running water – but it serves the family's needs and is in keeping with the feeling of primitive wilderness which has drawn five generations of the family to come to spend at least a portion of their summers at Elk Lake. In fact, Dale notes that when family members come to stay at the cabin, only those who are elderly or sick actually stay in the cabin – it is a family tradition for everyone to sleep outside under the stars, enjoying their special spot's solitude and natural beauty to the fullest.<sup>1</sup>

What is particularly unique about the experience of Dale and her family is that they do not directly own the land upon which their cabin is built. Elk Lake is part of the Deschutes National Forest, and their cabin, along with thirty one other cabins on Elk Lake, is built on national forest land, which the cabin owners occupy by right of special use permits from the U.S. Forest Service. These people are part of the Recreation Residence Program, begun by the U.S. Forest Service in the early part of the twentieth century, which allows individuals or organizations who have obtained a special use permit to build a cabin, or in the case of organizations, a structure such as a clubhouse, at their own expense on tracts of national forest land set aside for this purpose. Many of these cabins are now in the fourth or fifth generation of family ownership.

### Thesis Statement

The Recreation Residence Program represents a unique use of public land, which has only received limited attention by historians. Because the permit holders own their cabins, but not the lands upon which the cabins are built, many questions arise regarding the nature of the rights and ownership roles of the permit holders, the federal government, and the general public. Although the U.S Forest Service

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<sup>1</sup> Dale Tigner, telephone interview by author, April 17, 2009.

considers the Recreation Residence Program to be a valid use of public land, controversy surrounds what some outside the program feel to be the privatization of that land, or the vesting of private rights on public land. The Recreation Residence Program embodies a legal and environmental history case study that contributes original research to the large body of scholarly literature examining the cultural construction of both property and natural resource rights in the American West.

Although western and environmental historians have explored this complex topic through various case studies—homesteading, grazing, mining, irrigation, logging, and fishing—the Recreational Residence Program of the Forest Service has remained largely unexamined by students of history, law, or public policy.<sup>2</sup> In his landmark book, *Crossing the Next Meridian: Land, Water, and the Future of the West*, Charles F. Wilkinson argues that “westwide, natural resource policy is dominated by the lords of yesteryear, a battery of nineteenth-century laws, policies, and ideas that arose under wholly different social and economic conditions but that remain in effect due to inertia, powerful lobbying forces, and lack of public awareness.”<sup>3</sup> The “lords of yesteryear” that produced the Recreation Residence Program—as well as the contemporary National Park Act of 1916—combined Progressive Era and Romantic ideas of wilderness and nature with early modern outdoor recreation and tourism. For some critics of these “forest summer homes” they represent the precursors to post-war destination resorts, commercialized ecotourism, and un-incorporated rural subdivisions.

The idea of a “public trust doctrine,” recognized by the U.S. legal system, is that the government has a responsibility to administer public lands in the best interest of the public as a whole. The workings

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<sup>2</sup> Stanford J. Layton, *To No Privileged Class: The Rationalization of Homesteading and Rural Life in the Early Twentieth-Century American West*, (Provo: Brigham Young University, 1988); Karen R. Merrill, *Public Lands and Political Meaning: Ranchers, the Government, and the Property Between Them* (Berkeley: University of California Press, 2002); Wesley Calef, *Private Grazing and Public Lands: Studies of the Local Management of the Taylor Grazing Act* (Chicago: University of Chicago Press, 1960); Donald J. Pisani, *Water, Land & Law in the West: The Limits of Public Policy, 1850-1920*, (Lawrence: University of Kansas Press, 1996); Nancy Langston, *Forest Dreams, Forest Nightmares: The Paradox of Old Growth in the Inland West*, (Seattle: University of Washington Press, 1995).

<sup>3</sup> Charles F. Wilkinson, *Crossing the Next Meridian: Land, Water, and the Future of the West*, (Washington, DC: Island Press, 1992), 17.

of institutions such as the Forest Service are theoretically based on this ideology. For some, according to this ideology, a special and rather exclusive use of public land by individuals would likely be seen as a privilege. However, juxtaposed to the public trust doctrine is the idea of “pre-emption,” or the “doctrine of prior appropriation,” which asserts that a person in effect lays claim to an area by first and continuous use and occupancy and consequently such action creates an exclusive right of use, if not a fee-simple, proprietary right..<sup>4</sup>

The issues faced by those involved in the recreation residence program highlight this privilege vs. right debate on a number of levels, which will be examined in this paper. This paper addresses the history of the Recreation Residence Program, specifically in the Deschutes National Forest in Central Oregon, while considering the following questions: What has been the nature of the roles and interactions between the Forest Service, permit holders, and the general public in the Recreation Residence Program in the West and specifically in the Deschutes National Forest, and how have these interactions changed from the beginning of the program to the present? Considering the Forest Service’s responsibility to regulate public land use for “the greatest good to the greatest number of people,”<sup>5</sup> was or is the Recreation Residence Program a valid or justified use of public land, and has the perception of its validity or role changed as public land use in the West (and in the Deschutes National Forest) evolved during this time? Finally, considering the duration of time that many families have held their permits, has their sense of ownership taken on a new dimension which deserves special consideration? It should be kept in mind that, due to the lack of previous academic literature on this subject, the intention of this paper is only to provide an introductory survey of this program and to touch on the broader issues which are implicated in the changing history of the program, by focusing on the

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<sup>4</sup> Everett Dick, *The Lure of the Land: a Social History of the Public Lands from the Articles of Confederation to the New Deal*, (Lincoln: University of Nebraska Press, 1970), 4-5.

<sup>5</sup> Gifford Pinchot, as quoted in U.S. Department of Agriculture, U.S. Forest Service, *Utility and Service Combined with Beauty: a Contextual and Architectural History of USDA Forest Service Region 6: 1905-1960*, Prepared by Ward Tonsfeldt Consulting for U.S. Dept. of Agriculture, Forest Service, Pacific Northwest Region (Oregon and Washington), (Bend, Oregon, 2005), 12.

history of the program within the Deschutes National Forest. The topic is a controversial one, and due to lack of previous research, the author found it necessary to rely a great deal on personal interviews, which are necessarily subjective, but also contain valuable perspectives which shed a great deal of light on issues surrounding the program, and which would otherwise be lost to historians.

### Historical Background of National Forest Land Use

The use of public lands for private, and specifically recreational, purposes, such as for a hunting or fishing shack, existed long before the establishment of federal land use regulations, and continue to exist, legally and illegally. In the 1800s, particularly in the West, the general sentiment of public land being available for use by anyone and for virtually any purpose was widespread. By the late 1800s, however, many felt a growing conviction that the government had a responsibility to act as a steward in promoting the preservation of the natural beauty of many areas of public land in the United States, and in protecting them from irresponsible use by individuals. This sentiment is echoed in the title of the presentation of the botanist Franklin B. Hough to the American Association for the Advancement of Science in 1872, titled "On the Duty of the Governments in the Preservation of Forests."<sup>6</sup> In 1891, following the Forest Reserve Act by Congress, this idea of setting aside land from unrestricted use by the general public, under the protection and management of the government, became reality when the first federal forest reserve, the Yellowstone Forest Reserve in Wyoming, was instituted by President Benjamin B. Harrison. Forest reserves in the Pacific Northwest soon followed, including the Cascade Reserve in 1893, and the Mt. Rainier and Olympic Reserves in Washington in 1897.<sup>7</sup> Legislation such as the Organic Act of 1897 appropriated funding to manage the reserves.<sup>8</sup> With the Forest Transfer Act of 1905,<sup>9</sup> federal forest reserves came under the jurisdiction of the newly established United States Forest Service, and soon came

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<sup>6</sup> USDA Forest Service, *Utility and Service*, 5.

<sup>7</sup> *Ibid.*, 8.

<sup>8</sup> *Act of June 4, 1897 (Organic Act of 1897), U.S. Statutes at Large* 30, (1899): 35.

<sup>9</sup> *Forest Transfer Act of 1905* 33, (1905): 628.

to be known as national forests.<sup>10</sup> The mission of the Forest Service in administering the new national forests was expressed by its first leader, Gifford Pinchot, as providing “the greatest good to the greatest number of people.”<sup>11</sup>

However, with the concept of preservation came the restriction of the lands’ occupation or use by individuals. The setting aside of land to be managed and protected by the government was understandably somewhat controversial, as many people were still actively seeking to homestead land, particularly in the West, and the idea of public land not necessarily being open to the public was likely difficult for some. An interesting concession to this resulting dissatisfaction came in the form of the Forest Homestead Act of 1906, which allowed homesteading of arable land within the forest reserves.<sup>12</sup> As a result, Forest Service rangers such as Grover C. Blake, who worked on several national forests in the Pacific Northwest, including the Deschutes National Forest beginning in 1909, reported that “we were required to spend considerable time examining and reporting on valid and invalid homestead claims which dotted the Forest areas, and had to deal with numerous applications.”<sup>13</sup> In a further effort to placate the public, Pinchot declared in his *Use Book* (1907) that not only were homesteading opportunities available, but that, as cited in the Forest Service Region 6 report *Utility and Service*, “prospecting, staking claims, and mining were to ‘go on just as if there were no National Forests there.’”<sup>14</sup> Although such free use of national forest land as described above is no longer the norm, these practices did set a precedent for public use of land by special use permits for grazing, timber, and most notably for this discussion, the Recreation Residence Program. Clearly, the question of ownership and use of public lands, as seen by these issues, continues to be a major theme affecting Forest Service–public relations. Although the national forests technically are owned by the public and are managed “for” the public, in a sense they also are protected “from” the public. The responsibility of the Forest Service, then, is to administer the lands

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<sup>10</sup> USDA Forest Service, *Utility and Service*, 9.

<sup>11</sup> USDA Forest Service, *Utility and Service*, 12.

<sup>12</sup> *Act of June 11, 1906 (Forest Homestead Act)*, U.S. Statutes at Large 34, (1906): 233.

<sup>13</sup> Rolf Anderson, ed., *We Had an Objective in Mind: The U.S. Forest Service in the Pacific Northwest, 1905-2005* (Bend: Maverick Publications, 2005), 7.

<sup>14</sup> USDA Forest Service, *Utility and Service*, 14.

in a way that benefits the majority of the population. Determining how to do this can be both challenging and subjective, as the general population presents a myriad of different and sometimes conflicting values, perspectives, and needs. This can be particularly challenging in the case of special-use permits, which directly serve an individual or organization, and may only indirectly serve the general public.

#### Establishment and Promotion of the Recreation Residence Program

The Recreation Residence Program was instituted by Congress's Act of March 4, 1915, also known as the Term Occupancy Act (or Occupancy Permit Act), which allowed for the "Use and occupation of land for hotels, resorts, summer homes, stores, and facilities for industrial, commercial, educational or public uses."<sup>15</sup> Prior to this, the Forest Management Act of June 4, 1897 (also known as the Organic Act) had made it possible for individuals to obtain one-year land use permits for recreational use of a tract of public land, such as for a hunting shack, but a one-year permit did not guarantee much stability, and many were hesitant to make improvements to the land when there was the possibility that their permit could be revoked the following year.<sup>16</sup> This was reflected in a 1914 congressional report which proposed what would become the Term Occupancy Act, and which noted that "the revocable permit offers a serious difficulty, which can be readily overcome by extending the authority of the secretary to the granting of leases for definite periods." The report further opined that "The adoption of this paragraph will increase the public benefits and public uses of the national forests."<sup>17</sup>

The resulting Term Occupancy Act of March 4, 1915 did offer a guarantee of more long-term use. As related to summer homes, it authorized the Secretary of Agriculture to, "under such regulations as he may

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<sup>15</sup> *Act of March 4, 1915*, 16 USC 497: 891

<sup>16</sup> Eldorado National Forest, "Recreational Activities: Recreation Residences," U.S. Forest Service, <http://www.fs.fed.us/r5/eldorado/recreation/recres/>, (accessed May 5, 2009).

<sup>17</sup> House of Representatives, Committee on Agriculture, *Agriculture Appropriations Bill*, 63<sup>rd</sup> Cong., 2<sup>nd</sup> sess., 1914, Rep. 295, 32.



make and upon such terms and conditions as he may deem proper,” to set aside lots of no more than five acres on national forests “for the purpose of constructing or maintaining summer homes and stores.”<sup>18</sup>

This is a special use permit for use of public land, and is not technically a lease of the land. It should be noted that there is no reference in the Act to the commonly referred to “99 year lease,” which many people believe that the owners of summer homes possess. This is in fact a myth, according to the U.S. Forest Service:

There is not, and never has been, a Forest Service “99 year lease”. In the early part of the century, some portions of private land were leased for summer homes and subdivisions for 99 years, and some leases still exist. It is possible that because they were located adjacent to National Forest land in the foothills and mountains, National Forest Recreation residence tracts became associated with this type of lease. .<sup>19</sup>

At the program’s peak, in approximately the 1950s, almost 20,000 cabins were permitted through the recreation residence program.<sup>20</sup> In 1960s, however, national forests stopped setting aside new tracts, in 1978 an end was put to the development of new lots within existing tracts, and in 1988 the permits were standardized as twenty year permits (rather than thirty year permits originally specified in the Term Occupancy Act).<sup>21</sup> Because no new lots are now available through the program, and when cabins are destroyed, such as by a forest fire or mudslide, the Forest Service may not always allow them to be replaced, there are currently less than 15,000 cabins on national forest land in the United States.<sup>22</sup> In 1993, according to a review of the program published by the Forest Service, permits for recreation residences existed in all nine regions of the Forest Service in the United States, although the vast majority of the permits were for locations in the western states. The review notes that in the survey, it was found

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<sup>18</sup> *Act of March 4, 1915*, 16 USC 497: 891

<sup>19</sup> Eldorado National Forest, “Recreational Activities: Recreation Residences,” U.S. Forest Service, <http://www.fs.fed.us/r5/eldorado/recreation/recres/>, (accessed May 5, 2009).

<sup>20</sup> U.S. Department of Agriculture, U.S. Forest Service, *National Recreation Residence Review and Action Plan*, (Washington D.C., September 1993), 6.

<sup>21</sup> *Ibid.*.

<sup>22</sup> National Forest Homeowners, “Historic Summary – USDA F.S. Recreation Residence Program,” National Forest Homeowners, <http://www.nationalforesthowners.org/historic%20summary%20-%20recreational%20residence%20program.html> (accessed May 27, 2009).

that “most permits involved high-value recreation land,” again highlighting the conflict that can exist between this and other forms of recreation on national forest land.<sup>23</sup> Citing 1991 statistics, the review stated that recreation residence lots accounted for approximately 10,000 acres of national forest land, and generated almost 25% of “annual land use income” for national forest land.<sup>24</sup> Most recreation residences were located in California (approximately 6,600, or 40%). The states of Oregon and Washington together, which make up Region Six of the Forest Service, collectively had the second highest number of recreation residences (approximately 2,800) in the nation.<sup>25</sup> It should be noted that these numbers are over ten years old, but they will still serve to provide a general profile of the program. On the Deschutes National Forest, which is the primary focus of this paper, there are currently 284 permits issued for recreation residences.<sup>26</sup>

The general consensus among those familiar with the program is that it was originally intended, in the words of Forest Service archaeologist Leslie Hickerson, as “a way of getting the public out into the woods.”<sup>27</sup> It seems possible that, at a time when the era of the Manifest Destiny was ending, and Western “frontier” had been proclaimed “closed,”<sup>28</sup> the recreation residence program could very well have been introduced to continue to serve the function of a frontier, in which an average, middle-class individual would have an opportunity to carve out his place in the wilderness, and to be physically and emotionally improved by the experience. Even if fee simple ownership was not an option, it could be considered a “second best” situation, and certainly held potential for making members of the public stakeholders in National Forests<sup>29</sup>. Dan Gildor, author of *Location, Location, Location*, a journal article which examines

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<sup>23</sup> USDA Forest Service, *Recreation Residence Review*, 6.

<sup>24</sup> USDA Forest Service, *Recreation Residence Review*, 5.

<sup>25</sup> USDA Forest Service, *Recreation Residence Review*, 6.

<sup>26</sup> Richard Wesseler, U.S. Forest Service Special Use Administration, interview by author, Deschutes National Forest, Bend-Ft. Rock Ranger Station, Bend, OR, April 15, 2009.

<sup>27</sup> Leslie Hickerson, U.S. Forest Service archaeologist, Deschutes National Forest, telephone interview by author, Bend, OR, May 5, 2009.

<sup>28</sup> Frederick Jackson Turner, “The Significance of the Frontier in American History” (presented at meeting of the American Historical Association, Chicago, IL, July 12, 1893).

<sup>29</sup> The term “fee simple ownership” refers to the full private ownership of land which most people hold.

the program, contends “The public responded well to the romantic portrayal of how ‘many a business man has gained healthful and keen enjoyment in clearing a small area and erecting thereon a cabin in accordance with his purse and ability.’<sup>30</sup> Such romanticism, fueled by the ‘back to nature’ movement, dramatically increased the demand for recreation.”<sup>31</sup> Clearly, this was an era in which recreation on public lands was beginning to take on new importance, as newly citified people looked for ways to experience “primitive wilderness.”

Interestingly, the recreation residence program was instituted just about a year before the National Park Service Act<sup>32</sup> was passed, which provided for similar recreation opportunities under the administration of the National Park Service. In his history of the Forest Service, historian Harold Steen often notes the competition between the Forest Service and the Park Service in this area of recreation, where the administration of the two agencies often overlapped.<sup>33</sup> The remarks of Head Forester Albert Potter in a 1917 report to the Secretary of Agriculture confirm that the Forest Service’s interest in promoting the trend toward recreation on national forest land. Potter reports the growing number of special use permits being taken out for recreation purposes, citing statistics from California, and comments that this growth is “largely attributable to the provisions of the Act of March 4, 1915”, saying,

Already it has been demonstrated that this legislation was just what was needed, and as a result of it the National Forests are performing a larger public service. The use of some of the National forests for recreations purposes is growing to such importance as to be one of the major activities. . .It is believed that the use of the National Forests along this line, as shown by the foregoing figures, represents only a promising beginning of the development which is to follow.<sup>34</sup>

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<sup>30</sup> Harold C. Bryant, *Outdoor Heritage* (1929): 347-8, as quoted by Dan Gildor in “Location, Location, Location: Forest Service Administration of the Recreation Residence Program.” *Ecology Law Quarterly* 28, no. 4 (2002): 998.

<sup>31</sup> Gildor, *Location, Location, Location*, 998.

<sup>32</sup> *Act of August 25, 1916 (National Park Service Organic Act of 1916)*, *U.S. Statutes at Large*, 39 (1916): 535.

<sup>33</sup> Harold Steen, *The U.S. Forest Service: a History*, (Seattle: University of Washington, 2004).

<sup>34</sup> Alfred F. Potter, Chief Forester, *Annual Reports for the Department of Agriculture for the Year Ended June 30, 1917: Report of the Secretary of Agriculture, Report of Chiefs*, (Washington: Government Printing Office, 1918), 184.

One man influential in the recreation residence program's development was consultant to the Forest Service Frank A. Waugh, who argued that recreation should be given an equal priority to higher profile uses such as timber. As a result of his influence, recreation residence tracts were often placed in highly desirable locations – often with waterfront lots and scenic views. He advised that, “The territory usually desired for permanent camps is tree covered, and lies in canyons, along mountain streams, or beside mountain lakes.”<sup>35</sup>

As such, the program was marketed quite aggressively to the American public, particularly in the West. The promotion of the program in the Pacific Northwest and on the Deschutes National Forest is best seen by two early documents. The first is a 1932 promotional pamphlet titled *Summer Homes in the National Forests of Oregon and Washington*. Its author, Fred Cleator, was responsible for recreation planning in Region 6 beginning in 1919, and was a key figure in the history of the region's recreation residence program.<sup>36</sup> The eagerness of the Forest Service to market the program is evident throughout the pamphlet, as evinced by statements such as the following:

If the seeker for a mountain summer home desires to be near a lake, a river, a creek, a hot spring, a mineral spring, a cold spring, or a falls, he can be satisfied within reason if he will but inquire. The angler, the hunter, the hiker, the photographer, the mountain climber, the water-sports lover has but to make inquiries, and in all probability he will find a suitable place.<sup>37</sup>

In addition, Cleator promises an abundance of natural resources to meet all of the potential permittee's needs:

In the Pacific Northwest, there is not only abundant timber and brush for shade and as a setting to frame the summer-home picture, but there is abundance of water in different forms. Water of some kind is practically always a part of the picture and fulfills the greatest needs of the vacationist.<sup>38</sup>

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<sup>35</sup> As cited by Gildor, “Location, Location, Location,” 1000.

<sup>36</sup> Rolf Anderson, ed., *We Had an Objective in Mind*, 202.

<sup>37</sup> Fred W. Cleator, *Summer Homes in the National Forests of Oregon and Washington*, (USDA Forest Service, North Pacific Region, issued 1932, reproduced at the National Archives and Records Administration, Seattle), 2.

<sup>38</sup> *Ibid.*

While explaining the requirements for obtaining and keeping a permit, Cleator clarifies that “Permits will be issued to a family, a club of two or more individuals or families, or to a large organization, such as the Boy Scouts or Young Women’s Christian Association, or even to a city for a community health camp.”<sup>39</sup> Such organizations would receive a different type of permit, however, as Cleator notes that “The ordinary summer home lot is surveyed for one residence only. . . Club and organization permits allow for more buildings.”<sup>40</sup>



A simple, inexpensive, yet attractive, little summer cabin

Figure 1: This photograph, taken from the pamphlet, was intended as an illustration of the type of summer home idealized by the visionaries of the recreation residence program. (Cleator, pg. 2)

The early promotion of the program within the Deschutes National Forest is best seen by the second of the two documents referred to earlier, a newspaper article published on August 2, 1916 in the *Bend Bulletin*. The article, titled “Forest Beauty Spots Offered: Government Wants Them Developed,” announces that “Tracts of Five Acres are Available in Deschutes National Forest That May Be Had for Recreational Uses – Charges are Nominal,” and conveys the same eagerness to advance the program’s merits in glowing terms. The article outlines the program and the regulations which permit holders will have to follow, emphasizing that they are “not stringent,” and that “the rules and regulations governing occupancy of lands are not prohibitive of a person making even a large investment.” Furthermore, the article states that

In the opinion of Mr. Hastings [the Deschutes National Forest Supervisor] the lands which will probably be available in the Deschutes National Forest under the arrangement are almost unexcelled anywhere in the northwest. The scenery is beautiful and the places are now accessible from nearby points at low cost. Every encouragement, he says, will be given to local people desiring to take advantage of the government’s offer.<sup>41</sup>

<sup>39</sup> Ibid., 4.

<sup>40</sup> Ibid.

<sup>41</sup> *The Bend Bulletin*, “Forest Beauty Spots Offered: Government Wants Them Developed”, August 2, 1916.

According to local historian Raymond Hatton, the Deschutes National Forest received more than 100 requests for information after the article was published. Most of these came from local Oregonians, although some “came from as far away as Wyoming and Montana.”<sup>42</sup>

#### Establishment of Recreation Residences on the Deschutes National Forest

Recreation residence tracts were established at five highly desirable sites on the Deschutes National Forest – Elk Lake, Odell Lake, Crescent Lake, Paulina Lake, and the Metolius River.<sup>43</sup> Recreation residences still exist at all five of these locations. Each Tract was surveyed, complete with townships, ranges, and sections, and most useful for the purposes of the Forest Service, were divided into blocks/lots named by letters (tract J or E, for example).<sup>44</sup> These were further divided into individual lots. For example, the third lot in tract E would be referred to as E-3. The lots were surveyed to follow the natural lay of the land, and so some lots have an irregular shape, in keeping with natural features such as streams.<sup>45</sup> Some lots were later withdrawn, likely because the sites were determined to be unbuildable (for instance, Elk Lake tract J, lot 8).<sup>46</sup> On the original surveys of the tracts, some of which were done by Cleator himself, nearly all of the properties appear to be near the waterfront of the lake or river, although there is often a public trail along the water. Permits began to be issued soon after, as early as 1916 on the Metolius Tract.<sup>47</sup> By the 1950s, approximately the time period when the program was at its height nationwide, it had also become quite popular in Central Oregon, as evinced by the statement on a 1952 Central Oregon map’s guide to recreational activities, which noted of the “summer homes” that “All sites

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<sup>42</sup> Raymond Hatton, *Oregon’s Sisters Country: a Portrait of its Lands, Waters and People*, (Bend: Maverick Publications: 1996), 178.

<sup>43</sup> Because the sites as well as the sections within them are referred to as tracts, in this paper the uppercase “Tract” will refer to the general site (such as Elk Lake), while the lowercase “tract” will refer to the sections within the site.

<sup>44</sup> The author examined records of Cadastral land surveys through the University of Oregon, but found that those surveys predated the era of the Recreation Residence Program.

<sup>45</sup> Cleator, *Summer Homes in the National Forests of Oregon and Washington*, 7-8.

<sup>46</sup> Wessler, email message to author, December 16, 2009.

<sup>47</sup> Hatton, *Oregon’s Sisters Country*, 178.

along the Metolius River and at Elk and Paulina Lakes have been taken. However, a few are available at Crescent and Odell Lakes.<sup>48</sup>

Currently, there are 284 recreation residence permits issued on the Deschutes National Forest (see table)<sup>49</sup>. These were all renewed as of Jan. 1, 2009, and will expire on Dec. 31, 2028.<sup>50</sup>

Tract	Number of Permits
Metolius River	108
Crescent Lake	72
Odell Lake	66
Elk Lake	32
Paulina Lake	6

**Table 1: Number of permits per tract on Deschutes National Forest as of Jan. 1, 2009.** Source: Richard Wessler, U.S. Forest Service Special Use Administration, interview by author, Bend-Ft. Rock Ranger District, Deschutes National Forest, Bend, OR, April 15, 2009.

Each of these five sites will now be introduced individually.

### *The Metolius River Tract*

It seems from the dates which appear on the original surveys of the tracts that the Metolius River was home to some of the earliest recreation residence tracts surveyed on the Deschutes National Forest. The earliest dated surveys are those of tracts H and I, for which the official survey date is 1921<sup>51</sup>, although two permits had already been taken out for lots on tract H in 1916. They were followed by tract C (date of

<sup>48</sup> Map of Deschutes National Forest. United States, *Deschutes National Forest*, (Washington: Government Printing Office, 1952).

<sup>49</sup> Wessler, interview.

<sup>50</sup> Ibid.

<sup>51</sup> USDA Forest Service, Deschutes National Forest, "Metolius Recreation Residence Site Tracts H and I", originally surveyed by C.J. Buck, F.W. Cleator, and Perry South, June 22, 1921. Two consequent surveys in 1924 and 1927. Compiled by E.J. Schlatter, December 1989.

survey illegible)<sup>52</sup>, tract E (1922)<sup>53</sup>, tract F (1927)<sup>54</sup>, and tract O (1927 and 1929).<sup>55</sup> Interestingly, an additional tract Q is recorded on the survey, with the note that it is “Classified as a Health Camp.”<sup>56</sup> Apparently, this camp never was established. However, this serves as a reminder that, as discussed earlier, the program was also designed to accommodate more corporate uses of the land, although they were not as common.

It is worth noting that the subdivision of the tracts did not always immediately follow the original survey. For example, tract E was surveyed on Sept. 15, 1922, but was not subdivided until November of 1933 (see footnote 51). According to the records which the Forest Service still retains (some early records were lost in a fire at the nearby Sisters Ranger Station in the early twentieth century<sup>57</sup>), the earliest cabins on tract E did not appear until 1934.<sup>58</sup> In some cases, then, some time elapsed between the surveying of the land and its actual occupation by permit holders. The majority of the recreation residences on the Metolius River appear to have originally been constructed in the period of the 1930s to the 1950s.<sup>59</sup> Currently, there are 108 recreation residence permits issued for the Metolius tracts. The cabins line both the east and west sides of the Metolius River and overall occupy about fifty acres of National Forest land,<sup>60</sup> near the small community of Camp Sherman. The individual lots each occupy, on

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<sup>52</sup> USDA Forest Service, North Pacific Region, Deschutes National Forest, “Site Plan: Metolius River – Tract “C” Recreation Residence Site,” Fieldwork by C.L.C., date of survey illegible.

<sup>53</sup> USDA Forest Service, Deschutes National Forest, “Metolius Recreation Residence Site: Tract E and F. Tract E surveyed Sept. 15, 1922 by F.W. Cleator and subdivided Nov. 1933 by C.L. Clark, Tract F surveyed July 1927 by R.L. Fromme.

<sup>54</sup> Ibid.

<sup>55</sup> USDA Forest Service, Deschutes National Forest, “Metolius Recreation Residence Site Tract O,” Surveyed by R.L. Fromme, P.A. South, and Archie Brown, “during Summers of 1927 and 1929.” Keep in mind that the survey records may be incomplete, and the surveys of additional tracts may be missing.

<sup>56</sup> Ibid.

<sup>57</sup> Jeff Sims, U.S. Forest Service Lands Forester and special uses coordinator for Sister Ranger District, Deschutes National Forest, telephone interview by author, April 23, 2009.

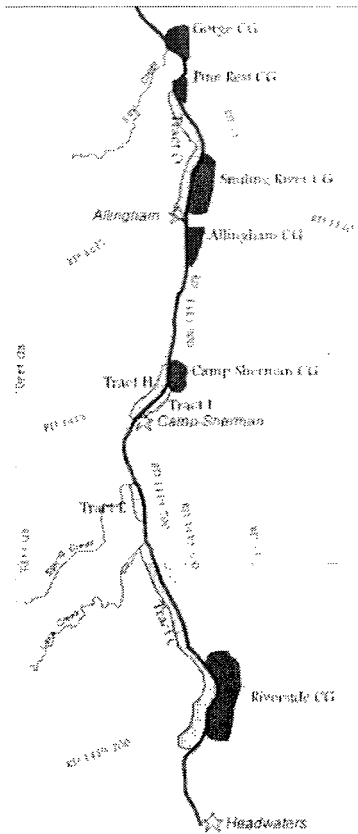
<sup>58</sup> U.S. Forest Service. Deschutes National Forest. “Metolius/Camp Sherman.” An inventory of cabins, with dates of construction, and the corresponding determination of their historical significance.

<sup>59</sup> Ibid.

<sup>60</sup> Forest Service employee Jeff Sims, who oversees the recreation residence tracts on the Metolius River, estimates that an individual walking along the river would walk past the recreation residences for approximately 10-15 minutes.



average, about ½ acre in size.<sup>61</sup> Although the cabins are near the river, the current structures must be set back at least 50 ft. from the river, and any structures that are rebuilt in the future must be set back 100 ft. from the river.<sup>62</sup>



**Figure 2. Map of recreation residence tract locations along Metolius river. Source: U.S. Forest Service. Deschutes National Forest. Metolius Wild and Scenic River Management Plan: Final Environmental Impact Statement. October 1996.**

Early interest in the lots available on the Metolius River came particularly from a number of wheat farmers from Sherman County. According to Hatton, the Forest Service received inquiries from 18 families from Sherman County, or approximately 70 people, as to the possibility of acquiring permits for lots along the Metolius River. He stated, “The interest on the part of the residents of Sherman County dated back to 1911, when the fishing and the scenery on the Metolius were attracting more and more families to spend summer vacations there. In 1915 several Sherman County residents, returning from the Panama-Pacific Exposition in San Francisco, detoured to the Metolius and camped there before returning to Sherman County.”<sup>63</sup> The name of the nearby community of Camp Sherman is due to the Sherman County influence. According to the nearby city of Sisters’

Chamber of Commerce website, “Along the way, the name Camp Sherman was written on a shoebox top and nailed to a tree at a fork in the road to show those who came later which way to go.”<sup>64</sup>

In 1916, three of these individuals, William Heinrichs, O.L. Belshe, and Martin Hansen, built summer cabins on the Metolius under permit by the recreation residence program.<sup>65</sup> The area continued to be popular for these vacationers, as evinced by a quote from the Madras *Pioneer*

<sup>61</sup> Jeff Sims interview.

<sup>62</sup> This is due to the river’s Wild and Scenic designation. Mark Dohrmann, cabin owner, telephone interview by author, May 14, 2009.

<sup>63</sup> Hatton, 178

<sup>64</sup> Sisters Area Chamber of Commerce, “Camp Sherman,” Sisters Chamber of Commerce, <http://www.sisterschamber.com/Visit-Sisters/Camp-Sherman/default.aspx> (accessed May 16, 2009).

newspaper on June 22, 1916: “. . .Lots of traffic going through our part of the country to the Metolius River and mountains, at present. They are going by auto and covered wagons and it seems like the days of old have returned, for you see trains of pack mules heavily laden.”<sup>66</sup>

The Metolius River received the national designation of a Wild and Scenic River by Congress in 1986. The Act allows for some sections of a wild and scenic river to be considered “recreational river areas,” allowing for the ecological disturbances created by uses such as recreation residences.<sup>67</sup> While the October 1996 Final Environmental Impact Statement for the Metolius Wild and Scenic River Plan, prepared for the affected areas along the Metolius River by the Deschutes National Forest, recognized that the “effect of recreational use on the natural resources and character of the river corridor is perhaps the strongest public issue,” it also noted that recreation residences have become an important part of the Metolius River’s historical character in stating, “During scoping, many [of the people who submitted comments] strongly supported maintaining summer homes because they are a tradition along the Metolius and add to the river’s ambiance and character. They viewed the recreation residences as an integral part of the historic community identity of Camp Sherman.”<sup>68</sup>

Additionally, the document stated that “Removing recreation residences. . .results in the loss of many potentially historic structures.”<sup>69</sup>

Mark Dohrmann, who owns a recreation residence on the Metolius, notes that cabin owners are subject to additional regulations as a result of the designation. In areas designated “scenic” by the Act, these include additional rules concerning taking water from the river and ensuring that cabins do not pollute the water quality of the river. Dohrmann argues that while there has been concern from some of the public that some cabins may have leaking septic tanks, there has not been evidence shown of this.

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<sup>65</sup> Hatton, 178.

<sup>66</sup> *Madras Pioneer*, June 22, 1916.

<sup>67</sup> U.S. Forest Service, Deschutes National Forest, *Metolius Wild and Scenic River Management Plan*, 2.

<sup>68</sup> *Ibid.*, 2, 30.

<sup>69</sup> U.S. Forest Service, Deschutes National Forest, *Metolius Wild and Scenic River Management Plan*, 42.

However, Dohrmann estimates, over a half a million dollars have recently been spent by cabin owners on the river in upgrading their septic tanks in compliance with Forest Service regulations.<sup>70</sup> It is significant that it has been possible for the recreation residence program at the Metolius River to coexist alongside this type of environmental designation.

### *The Elk Lake Tract*

The Elk Lake tracts were surveyed shortly after those on the Metolius, beginning in 1922,<sup>71</sup> and included 32 lots – all of which continue to be under permit for recreation residences.<sup>72</sup> The period of 1920s to the 1930s appears to have been the most active construction period for summer homes on Elk Lake.<sup>73</sup> The Elk Lake lodge was built in the years 1923-1924 by Alan Wilcoxson, along with several guest cabins along Elk Creek.<sup>74</sup> A 1979 USDA aerial photograph shows an orderly row of cabins, fronted by docks, along the shoreline of the lake.<sup>75</sup>

Dale Tigner's grandfather was one of these early permit holders. According to Tigner, her grandfather often camped at Elk Lake when vacationing with a number of doctor friends in the 1930s. In 1936, he obtained a permit for a lot on the north side of the lake, and thus began five generations of family history at their Elk Lake cabin. Interviews with cabin owners indicate that the application for recreation residence permits by people who were already actively using the area for recreation was a common scenario. However, Tigner is quick to acknowledge that in order to participate in the program, a person "had to have some money," and the cost of constructing and maintaining improvements on the lot likely precluded some individuals who may also have previously frequented the area.

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<sup>70</sup> According to Dohrmann, the manufacturer of his own new septic tank claims that water coming out of the septic "could be deemed drinkable." Dohrmann, interview.

<sup>71</sup> U.S. Forest Service. "Site Plan: Elk Lake Recreation Residences," surveyed August 1922 by F.W. Cleator.

<sup>72</sup> Wesseler, interview.

<sup>73</sup> "Oregon Inventory of Historic Properties: Historic Resource Survey Form," Prepared for the U.S. Forest Service, Deschutes National Forest by East Slope Cultural Services, August 2007.

<sup>74</sup> Leslie Skelton, cabin owner, telephone interview by author, May 19, 2009.

<sup>75</sup> U.S. Department of Agriculture. Aerial photograph, Elk Lake, 1979, University of Oregon Maps and Aerial Photography Collection, Knight Library, Eugene, Oregon. (No further information given).

Another early permit holder at Elk Lake was Paul Hosmer, after whom the nearby Hosmer Lake is named.<sup>76</sup> As with the Tigner family cabin, the Hosmer cabin has now been in the family for several generations. Similarly to Tigner's grandfather, Paul Hosmer had frequented Elk Lake throughout the 1920s, staying in a friend's cabin, prior to applying for permit under the recreation residence program. The Hosmers' neighbors, the Harts, also longtime cabin owners at Elk Lake, had also come to rent cabins at the Elk Lake lodge for years prior to buying their own cabin. The Hosmer cabin was built in 1936 by local log cabin builder Lou Metke, who also built at least two other cabins on Elk Lake, as well as some cabins on the Metolius Tract. The cabin was constructed with all hand tools, and the logs were peeled on site.<sup>77</sup>

Leslie Skelton, Paul Hosmer's granddaughter, recalls that her great uncle, Roy Peebles, started a sailing club at Elk Lake which was active for about twenty years, until sometime in the 1980s. During that time, there were sailboat races held every weekend in the summer at Elk Lake, which she participated in along with both of her parents. Dale Tigner also remembers the sailboat races, which several of her uncles took part in. Additionally, both Tigner and Skelton note that there was a girls' camp located at Elk Lake at some point – presumably also under permit by the program.<sup>78</sup> The Tigner family still owns a canoe which was given to them by a camp employee when the camp closed. According to Skelton, one couple used wood from the camp buildings to build their own cabin, which was one of the earlier cabins at the lake, after the camp was no longer in use.

Both Tigner's and Skelton's accounts shed light on the early atmosphere of the recreation residence program, and the sense of community which often characterized the summer home tracts. Like their families, many of the other families at the lake had several generations of history there, and families often became quite close after seeing each other at the lake year after year. Skelton notes that the children that

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<sup>76</sup> Skelton, interview.

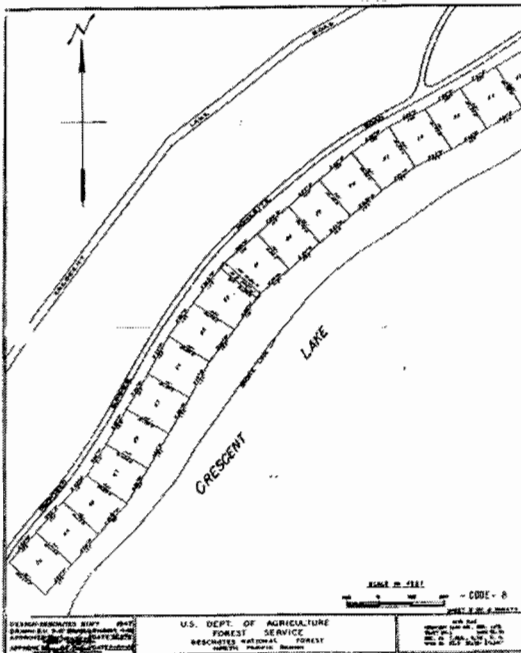
<sup>77</sup> Skelton, interview.

<sup>78</sup> This is yet another indication of the use of the recreation residence program by organizations.

used to play together in the summers at Elk Lake now bring their grandchildren to the lake, making it a true family experience.

In September of 1998, a forest fire burned down three cabins at Elk Lake, including the Hosmer and Hart family cabins. The Forest Service allowed all three cabin owners to rebuild on their original lots.<sup>79</sup>

### *The Crescent Lake Tract*



There are 73 surveyed lots for recreation residences at Crescent Lake,<sup>80</sup> although only 72 permits are currently issued for the Tract (lot 6 appears to have been withdrawn).<sup>81</sup> The majority of the recreation residences at the lake were built in the 1940s and 1950s, although one cabin is recorded as having originally been built as early as 1930.<sup>82</sup> Of all the tracts, Crescent Lake is perhaps the most developed and modernized.

About a ¼ mile from the lake is another tract of homes under special use permit by the Forest Service – not associated with the tracts at Crescent Lake – which has a particularly unique history.

Figure 3: Survey of a tract at Crescent Lake. This is not the Crescent Lake Townsite. Source: Deschutes National Forest. Tract survey for Crescent Lake, sheet 5 of 6, recreation residence lots 54-73, 1947.

According to the Forest Service, these cabins are not considered to be recreation residences, but the circumstances are so similar that

<sup>79</sup> Wessler, interview.

<sup>80</sup> U.S. Forest Service. Deschutes National Forest. "Site Plan: Crescent Lake Rec. Res. Site", sheet 6 of 6, (1947).

<sup>81</sup> Wessler, interview.

<sup>82</sup> This is lot 2. It appears to have been either rebuilt or added to in 1996. U.S. Forest Service. Deschutes National Forest. "Crescent Lake Cabins." An inventory of the cabins, with dates of construction, and the corresponding determination of their historic significance.

their story has been included.<sup>83</sup> According to Frances Deet,<sup>84</sup> whose parents first obtained a permit for their cabin in this tract from the Forest Service in the 1940s, this area was referred to as the “Crescent Lake Townsite,” and was essentially a semi-permanent camp used by workers for the Southern Pacific Railroad. Deet explained that the steam engines going from Klamath Falls to destinations such as Eugene needed to stop to refill water reservoirs for the steam engines about every hundred miles, and the townsite, according to Deet, was 101 miles from Klamath Falls. Deet estimates that at the townsite’s peak about twenty people associated with the railroad lived there, and it had a restaurant, grocery store, bar, and even a post office, all of which she believes were located on Forest Service land. While Deet’s family lived in Klamath Falls, her father was a conductor for the railroad and obtained the cabin (and associated special use permit) for his use when he was obliged to stay for a night or two from time to time. The cabin was originally built in the 1920s, and had been used by other railroad employees before her father obtained it. Although a fire burnt most of the commercial buildings in approximately 1975, and they were not rebuilt (as the townsite is no longer a stop for the railroad), many families such as the Deets retained their cabins. Deet says that the Forest Service wished to terminate the remaining seventeen permits for cabins there in the 1970s. The cabin owners protested, and in the resulting hearing with the Forest Service, it was decided that the current cabin owners would receive special lifetime permits, but that these permits would not be renewable after their deaths, at which time their family members would be responsible for removing the cabins from the land. As a result, according to the Forest Service, only nine cabins of the original seventeen cabins remain, with one in the process of being removed.<sup>85</sup>

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<sup>83</sup> Wesseler, email message to author, December 16, 2009.

<sup>84</sup> Frances Deet, daughter of cabin owner, telephone interview by author, June 3, 2009.

<sup>85</sup> Wesseler, email message to author, December 17, 2009.

*The Odell Lake Tract*

The recreation residence lots at Odell Lake were surveyed by the Forest Service beginning in 1925<sup>86</sup>, and the majority of the 66 cabins were constructed in the 1930s and 1940s.<sup>87</sup> A few of the buildings in the program at Odell Lake were originally built by a railroad company which worked in the area in the 1920s. They were not built on-site by the railroad, but were moved onto lots in one of the tracts by the company.<sup>88</sup> One example given by Forest Service archaeologist Leslie Hickerson of these structures, which were absorbed into the recreation residence program, was that of a cabin belonging to a doctor who worked for the railroad. The cabin apparently was constructed for him by the railroad company. When the purpose for the doctor's occupancy there as an employee of the railroad ended in approximately 1926, the cabin was then apparently incorporated into the program and the doctor was issued a special use permit for use of the land.

*The Paulina Lake Tract*

There are currently only six recreation residence lots under permit on the Paulina Lake Tract, although it appears from the original 1932 survey that there may originally have been ten lots, with lots numbered 1, 3, 7 and 8 having been withdrawn.<sup>89</sup> According to the Forest Service, all six cabins were built circa 1935.<sup>90</sup> Iradell Kilgor and Kate Copenhagen, both of whom owned cabins at Paulina Lake in the time period of the 1970s, recall a peaceful setting with good fishing, many encounters with wildlife, and lots of snow in the winter.<sup>91</sup> The Kilgor and Copenhagen families both accessed their cabins by snowmobile in

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<sup>86</sup> U.S. Forest Service. Deschutes National Forest. "Odell Lake Recreation Residence Site (Tract G-1)." Originally surveyed 1925 by Woodward, revised 12-6-62.

<sup>87</sup> U.S. Forest Service. Deschutes National Forest. "Odell Cabins." An inventory of cabins, with dates of construction, and corresponding determination of their historical significance.

<sup>88</sup> Wessler, email, December 17, 2009.

<sup>89</sup> U.S. Forest Service. Deschutes National Forest. "Paulina Lake Summer Homes Tract." Surveyed Oct. 11, 1932 by Cleator and Whitney. According to Wessler, this was likely because the lots were deemed unbuildable. Wessler, email, December 16, 2009.

<sup>90</sup> Prepared for U.S. Forest Service. Deschutes National Forest, by East Slope Cultural Services. "Oregon Inventory of Historic Properties: Historic Resource Survey Form." August 2007.

<sup>91</sup> Iradell Kilgor, cabin owner, telephone interview by author, June 3, 2009; Kate Copenhagen, cabin owner, telephone interview by author, June 4, 2009.

the winter, and Kate Copenhagen recalled that sometimes the snow came to within six inches of the top of the door of the cabin, and they had to dig out the door and windows of the cabin to let light inside, but that it was always very enjoyable. In another instance of the community spirit so often found on the tracts, both women recalled cooking Thanksgiving dinner together for their families on Kilgor's wood stove as a particularly enjoyable and memorable occasion. Copenhagen recalls that she was "absolutely thrilled" when she and her husband obtained their cabin, and reflects that "Never, ever, ever, did I go up [to Paulina Lake] and not feel this elation about being there. It was the most beautiful place. It was just grand."<sup>92</sup>

#### Permit-Holder – Forest Service Interactions

In a situation in which the structures and improvements on a lot are owned by an individual, but the land itself is owned by the government, in the name of the general public, many issues may arise which are both complex and challenging for those involved. The situation is more complicated than that of a person simply renting a summer cabin. For example, the permit holders have constructed and maintained the improvements on the land at their own expense, and retain full ownership of them. Additionally, the land upon which the cabins are constructed remains public land, and is therefore in theory open to use by anyone. The permit-holder, then, has a narrowly defined position, characterized by certain privileges on the one hand, but by specific and sometimes limiting requirements on the other hand. Likewise, the Forest Service is faced with the difficult juggling act of balancing private interests – in a situation which has nevertheless been deemed a valid and reasonable use of public land by national policy - with the interests of the general public.

How has this unique relationship transpired over the last century? The interactions between the Forest Service and the permit-holders may be best seen by examining several key issues in the recreation residence program: regulations of use, the historic designation of cabins, and fees. These issues are

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<sup>92</sup> Copenhagen, interview.



commonly addressed by associations of permit-holders, particularly the National Forest Homeowners (NFH), a powerful national lobbying group for the permit-holders. On a state level, the Oregon Forest Homeowners Association (OFHA) addresses more local issues relevant to permit-holders, while individual tract associations also exist.

### *Regulation of Use*

As is commonly the case when a special use permit is required, the participants in the recreation residence program must follow a number of regulatory guidelines to keep their permits. The Forest Service's responsibility is to regulate the program in such a way as to allow it to exist without interfering to a significant extent with other people's use and enjoyment of national forest land or being environmentally damaging. This goal was outlined by the Region 5 (Pacific Southwest Region) Regional Forester Bernard Weingardt in a clarification letter sent to forest supervisors in Region 5 in 2005:

The overall goal of the recreation residence program is to provide a unique recreation experience while protecting the forest environment; preventing urbanization of recreation residence tracts; assuring safety of the general public and permit holders; maintaining a National Forest setting; and ensuring compliance with the terms and conditions of the permit as well as compliance with requirements for protection of threatened and endangered species, historic cabins and tracts, and archeological properties.

Our key philosophy and objective is to use a common sense approach. We should be reasonable and flexible in implementing policy while meeting the overall objectives of managing this use on the National Forests. There will be situations when dealing with major issues such as public health and safety, environmental health, water, and waste disposal where legal and regulatory requirements should be stringently followed. At the same time, we intend to apply fair and reasonable discretion to accommodate cabin owners' enjoyment of National Forests.<sup>93</sup>

Regulations governing recreation residences seem to have been somewhat de-emphasized in the early years of the program, perhaps in an effort to make the program seem more appealing. As noted earlier, the 1916 article in the Bend *Bulletin* announcing the start of the program on the Deschutes National

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<sup>93</sup> U.S. Forest Service. Pacific Southwest Region. Bernard Weingardt, Regional Forester. *Recreation Residence Supplement 2709.11-2000-1 Clarification Letter* to Forest Supervisors, file code 2729, November 28, 2005.

Forest emphasized that the program regulations are “not stringent.”<sup>94</sup> Regulations are also mentioned, in slightly more detail, by Cleator in his pamphlet cited earlier, although the descriptions are sometimes rather vague. For example, regarding the construction of buildings, Cleator simply states, “It is mainly required with buildings that they be put up in a workmanlike manner. . .and that the setback of residence and general ensemble be not out of harmony with the neighborhood.”<sup>95</sup> He notes that “Plans and locations of improvements must be approved by the Forest Service before construction begins. This does not mean that the buildings must be uniform in character, but it will usually mean that they shall be of a generally accepted rustic style, and attractive in appearance.” Some details, however, are more specific, for example, “Glaring colors will not be permitted.”<sup>96</sup>

Over time, regulations have become more specific than the preliminary guidelines outlined above. Permits are now issued for a maximum of twenty years. Permit holders may sell their cabins, but the permit is not sold along with the cabin, and the Forest Service Manual states that new owners will have to apply for a new permit for “the remainder of the original permit term.”<sup>97</sup> No more than one permit may be issued to a single family, and generally no more than one dwelling may be built on a single lot.<sup>98</sup> Every twenty years, before the permits can be renewed, the Forest Service must determine if the use of that land for recreation residences is still consistent with the Forest Plan (in this case, the Deschutes National Forest Land and Resource Management Plan<sup>99</sup>). If the Forest Service determines that for some reason the land in question is no longer suitable for a recreation residence, perhaps because it has become unsafe due to some kind of natural disaster such as a mudslide, or it has been determined that there is a greater need to use that land for some other public use, or its use for a recreation residence is no longer consistent with the Forest Plan, the Forest Service has the authority to revoke the permit, but must give

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<sup>94</sup> *The Bend Bulletin*, “Forest Beauty Spots Offered,” August 2, 1916.

<sup>95</sup> Cleator, *Summer Homes in National Forests of Oregon and Washington*, 5.

<sup>96</sup> *Ibid.*

<sup>97</sup> U.S. Forest Service. *FSM 2700 – Special Uses Management: Chapter 2720 – Special Uses Administration*, (effective 04/03/2006), 14.

<sup>98</sup> *Ibid.*

<sup>99</sup> 1990, as amended. Robin Vora, interview by author, May 20, 2009.

the cabin owner ten years notice.<sup>100</sup> This situation could also potentially occur if the permit holder does not comply with Forest Service regulations.<sup>101</sup> The permit holder is then required to remove all of the improvements (such as buildings) from the land.

The permit holder must also follow specific regulations in the construction of improvements on the lot. For instance, the Forest Service requires that the cabins do not exceed 1200 ft.<sup>2</sup> and should not be more than 1 ½ stories (a ground floor and a loft). Colors used should “blend in with the natural environment,”<sup>102</sup> and must first be approved by the Forest Service. The Forest Service inspects all improvements to ensure that they comply with these and additional regulations. Because the land upon which the cabins are built is still open to the general public, fences and gates are usually not allowed.<sup>103</sup> Cabin owners are subject to county standards in the construction of their buildings.<sup>104</sup> Mark Dohrmann notes that permit holders are not allowed to use the cabin as a primary residence, and may not rent it for more than their cost of operation.<sup>105</sup>

In an example given by Sharon Karr, secretary of the OFHA, a recent inspection found fourteen cabins at Crescent Lake to be noncompliant in some way. Those permit holders were issued temporary one year permits until the issues were brought back into compliance. According to Karr, one issue that has arisen recently on the Deschutes National Forests is the question of water rights. Karr notes that apparently cabin owners were not technically allowed to draw from surface water (of the lake or river) to supply water for the cabin, but this was not enforced until recently. Cabin owners must apply and pay for water rights to use surface water from the state, having demonstrated that other methods of obtaining

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<sup>100</sup> U.S. Forest Service. *FSM 2700 – Special Uses Management: Chapter 2720*, 14-15.

<sup>101</sup> In cases of noncompliance on the Deschutes National Forest, the individuals have been issued a temporary one year permit until the problem is resolved. Sharon Karr, interview by author, May 20, 2009.

<sup>102</sup> U.S. Forest Service. *2709.11 – Special Uses Handbook: Region 6 Supplement 2709.11-94-1: Chapter 40 – Special Uses Administration*, (effective 04/05/94), 3.

<sup>103</sup> U.S. Forest Service. *2709.11*, 4.

<sup>104</sup> Mark Dohrmann, interview.

<sup>105</sup> *Ibid.*

water, such as drilling a well or transporting water to the cabin, are not “reasonable.”<sup>106</sup> All cabin owners who are not compliant in this case have been issued temporary one-year permits until the issue is resolved. Karr states, however, that even if an individual does obtain water rights to draw from surface water, this situation may become problematic if a permit is not renewed, in which case the water rights currently are transferred to the Forest Service, even though the permittee paid to obtain them from the state (not federal) government.<sup>107</sup>

Other recent issues noted by Dale Tigner and other cabin owners include the cutting of dead trees on the lot, and the upgrading of the cabin’s outhouse/toilet system, both of which are done at the cabin owner’s cost. According to Hickerson, most lots originally had 500 gallon steel drum septic tanks, which are no longer adequate, and may have to be replaced by the cabin owners, as the Forest Service is not responsible for the maintenance of cabins and improvements, which are private property. Mark Dohrmann notes that if a cabin owner wants to do “ground disturbing” work in an area on their lot which is considered to be archeologically significant by the Forest Service, the cabin owner must then pay for an archeological study prior to doing the work.

In interviews, cabin owners frequently cited frustrations with what they see as increasing stringency of regulations over time, and uneven application or enforcement of regulations. Communication with the agency has been seen as problematic at times. Berta Cleveland, a cabin owner at Elk Lake, says for instance, that while one Forest Service official may instruct them to cut down a tree, another official will tell them that it can’t be cut down. However, Cleveland notes that the Forest Service has accommodated the cabin owners in other ways. For instance, the Forest Service is currently considering allowing the cabin owners to put a gate across the public road going to the cabins due to a continuing problem with the

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<sup>106</sup> A Special Use Permit issued to Melvin and Harriet Shourd for a recreation residence at Crescent Lake, together with an application for water rights from the State of Oregon, and accompanying correspondence with the Forest Service. Received May 14, 2008 by the Water Resources Department, Salem, Oregon.

<sup>107</sup> Sharon Karr, interview.

stealing of firewood from the cabins.<sup>108</sup> Mark Dohrman sees the rules as having become “more restrictive,” but says that having restrictive rules to preserve the simplicity of the buildings in the tracts can be good because cabin owners are “not anxious” to see the recreation residences become similar to homes in nearby destination resorts. He notes that the Forest Service is very aware that the recreation residence program is a “high profile program” and wants to make sure that the cabins don’t look bad or stand out too much. Dohrmann feels that, while cabin owners may complain about regulations, they are “mostly OK with them,” at least “until you start getting into their pocketbook.”<sup>109</sup>

From the perspective of the Forest Service, it is not necessarily the regulations themselves, but rather their enforcement, which has varied over the history of the program and now might have become more strict. The Forest Service’s 1993 *Recreation Residence Review*, initiated to address compliance issues within the program, particularly in California, sent personnel to visit 600 of the cabins nationwide (None of the sites reviewed were on the Deschutes National Forest.), and found that “over 50% of the lots have permit compliance problems. . . Over 40% of the lots are of substandard appearance.”<sup>110</sup> The review asserted that “permit enforcement is low and declining.”<sup>111</sup> Again, because the Deschutes National Forest was not involved in the review, this has not necessarily been true in Central Oregon, but the comments do refer to what the personnel involved considered to be a national trend.

Here in Central Oregon, Hickerson cites the difficulty of enforcing the regulations, noting that it is “a constant thing” to keep people within the required footprint, complicated by “decision makers” not always having enforced the regulations.<sup>112</sup> In a 2008 interview with the *Oregonian*, Jim Sauser of the Forest Service, who oversees the recreation residence program in Region 6 (Oregon and Washington), acknowledged “We should be inspecting and administering them to a level greater than we do today, but we are limited by resources. Like anything else, in the rest of everyone’s life, when you go back to check,

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<sup>108</sup> Berta Cleveland, interview by author, April 30, 2009.

<sup>109</sup> Dohrmann, interview.

<sup>110</sup> U.S. Forest Service, *Recreation Residence Review*, 1.

<sup>111</sup> *Ibid.*, 13.

<sup>112</sup> Leslie Hickerson, interview.

there is slippage of what things should be like; what was approved that shouldn't have been approved; things that were bootlegged in. We are bringing them back to the standard.”<sup>113</sup>

### *Designation as Historic*

In accordance with the Historic Preservation Act of 1996 (NHPA), the U.S. Forest Service is required to evaluate the structures on the land which they administer for historic significance and eligibility for listing on the National Register of Historic Places, in order to take steps to preserve cultural resources on the land under its jurisdiction.<sup>114</sup> In the case of the recreation residence program, this has given rise to a situation which underscores the unique position of the Forest Service and cabin owners, and the roles of ownership which they occupy in the program. Although the permit holders own the cabins, in this case the Forest Service has the authority and the federally mandated responsibility not only to determine their historic significance, but in the case of a cabin being determined to have some historic contribution, to enforce strict regulations regarding the exterior appearance of the cabin, and to prevent its demolition. Thus, in effect, once a cabin is singled out either as being historic or contributing to a historic district, it has become an aspect of the land's history - a cultural resource of the National Forest - which the Forest Service then exercises jurisdiction over, further complicating the question of ownership roles and rights in the recreation residence program.

The NFH comments on this situation:

For the purposes of the NHPA the Federal Preservation Officer is in charge of decisions for permit holders. Since we do not have fee simple ownership or deeds to our cabins, and are occupying Federal land under Special Use Permits, the Federal Preservation Officer for the Forest Service is designated to act on historic matters. This authority is stated in 36CFR60.3(e) and elsewhere in Federal regulations. . .since we are not fee simple owners the FS is in charge and will order restoration and removal as they think necessary.<sup>115</sup>

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<sup>113</sup> Jim Sauser as quoted in *The Oregonian*, “Cabin Fever: The lure of rustic retreat in an old-growth forest fuels a love affair with a deep history – an uncertain future” by Larry Bingham, March 16, 2008.

<sup>114</sup> *National Historic Preservation Act of 1996*, Public Law 89-665, *U.S. Code*, 16 (1996) §470.

<sup>115</sup> National Forest Homeowners website, “Historic Eligibility of Cabins,” [http://www.nationalforesthowners.org/historic\\_status.html](http://www.nationalforesthowners.org/historic_status.html), accessed May 25, 2009.

According to the NFH, there are three possible categories of historic designation: eligible for listing on the National Register of Historic Places, nominated for listing, or actually listed on the National Register. The most likely designation for an older cabin is to be considered as “contributing to a historic district,” although some cabins are considered individually eligible for listing. A National Register district is a tract in which greater than fifty percent of the cabins contribute to the historic designation by the style and architecture that “represent that era of recreational development on public land,” according to Hickerson.<sup>116</sup> Some cabins may be considered “contributing,” but are not within a historic district (because >50% of the surrounding cabins do not contribute), as is the case with Dale Tigner’s cabin. On the Deschutes National Forest, eligible historic districts are found at the Metolius, Elk Lake, and Paulina Lake Tracts.<sup>117</sup> The Metolius, Elk Lake, and Odell Tracts all contain at least one cabin which is considered individually eligible. As noted by both Hickerson and the NFH, any cabin or district which is in the “eligible” status must be treated as if it is actually listed on the National Register, “even if there is no plan to ever nominate it for listing and no listing ever happens.”<sup>118</sup> The NFH says that, “This regulation applies forever, regardless of change of ownership, wishes of the cabin owners, damage to or deterioration of the cabin. The regulation also includes mandates that the property must not be neglected.”<sup>119</sup>

According to an overview of historic context contained in the Deschutes National Forest Guidelines for regulating cabins designated as historic, the “rustic” style referred to when describing the classic appearance of the older recreation residences specifically refers to a style which was popular during the era in which the original cabins were built, also referred to as the “National Park style.”<sup>120</sup> It is this style which the Forest Service and Department of the Interior seek to preserve in regulating any renovations or repair to cabins considered historic. The regulations for these cabins are much more specific, and contain

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<sup>116</sup> Leslie Hickerson, interview.

<sup>117</sup> Ibid.

<sup>118</sup> National Forest Homeowners website, “Historic Eligibility of Cabins.”

<sup>119</sup> Ibid.

<sup>120</sup> U.S. Department of Agriculture, *Deschutes National Forest Design Guidelines for Recreation Residences*,

detailed specifications for the construction and appearance of exterior elements of the cabin such as the roof, exterior walls, windows, doors, foundations, and other improvements.<sup>121</sup> The Forest Service does not regulate interior elements of the cabin, which are not publicly visible and thus not subject to NHPA regulations.<sup>122</sup>

According to Leslie Hickerson, the purpose of the regulations is to retain as much of the original character – and therefore historic value – of the building as possible. Hickerson notes, however, that when implementing standard permit regulations in the past, “decision makers have not always chosen to apply” the guidelines.<sup>123</sup> As an example, she remarks that in-kind replacement of the cabins’ features have only been enforced on the Crescent Ranger District (which includes Crescent and Odell Lakes) in the last six to eight years. Now, Hickerson says, “We’ve lost enough [historic resources] that [decision makers] have taken note.”<sup>124</sup> Windows and doors are among the items most often changed. Hickerson points out, however, that the Forest Service is not inflexible in making reasonable exceptions to the guidelines. For example, although cedar shake roofs are considered to be the historically appropriate choice for the cabins, the Forest Service permits metal roofs due to their decreased fire risk, and considers them to be a “reversible” alteration.<sup>125</sup>

Particularly in the case of a proposed demolition, (which must be approved by the District Ranger), the Forest Service archeologist must consult with the State Historic Preservation Office (whose role is to oversee and monitor federal agencies in the administration of the NHPA, and to serve as consultants), and initiate a process of documenting the cabin’s features, often in minute detail, using the Historic American

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<sup>121</sup> *Ibid.*, 6-12.

<sup>122</sup> Hickerson, email 1/5/10. She summarizes: “When cabin owners wish to remodel or replace their cabins, their requests are subject to review for compliance with Forest guidelines. If the structure is part of a National Register historic district or eligible as a stand-alone property, they are further subject to the Secretary of the Interior’s Standards regarding historic properties. If the cabin in question is not eligible, remodeling plans must still fall within the new recreation residence guidelines. The intent with the latter guidelines is to retain/maintain the rustic character of the “neighborhood.”

<sup>123</sup> *Ibid.*

<sup>124</sup> Hickerson, interview.

<sup>125</sup> *Ibid.*



Building Survey (HABS) standards.<sup>126</sup> Hickerson explains that the idea behind this process is that if the physical object cannot be saved, it will at least be possible to save adequate information about it that it could in theory be recreated or rebuilt. Both Hickerson and the NFH point out that while this federally required architectural documentation is often performed by the Forest Service free of charge, the Forest Service may require the cabin owners to finance the undertaking themselves if the local Forest Service office does not have a professional on staff who has the time and qualifications to do it.<sup>127</sup>

How this complicated entanglement of jurisdiction and ownership rights might play out is illustrated in the example of a recreation residence on the Wenatchee National Forest in Washington.<sup>128</sup> In this case, the new owners of the cabin decided to schedule the cabin “for imminent demolition”, in order that they might build a new cabin on the property.<sup>129</sup> Accordingly, the Forest archeologist prepared a “Cultural Resource Site Report and a Determination of Eligibility Report,” and the Wenatchee National Forest then contacted the Washington State Historic Preservation Office, which “concurred with the cabin’s National Register eligibility and with the adverse impact of the proposed undertaking.”<sup>130</sup> The cabin was then documented with the Historic American Buildings Survey (HABS), and the situation was then reviewed by several agencies. Additionally, the HABS report on the cabin states that the owners found it necessary to hire a private cultural resources consultant in order to “move forward with the required documentation.”<sup>131</sup> Thus, what might have seemed a simple matter – to tear down an old, privately owned cabin in order to build another one, became significantly more complicated as a result of the intertwined private and public interests involved.

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<sup>126</sup> Interestingly, the Historic American Buildings Survey functions as a component of the National Park Service – further evidence of the overlap of interests between the Forest Service and the National Park Service in the case of the recreation residence program.

<sup>127</sup> Hickerson, interview; National Forest Homeowners website, “Historic Eligibility of Cabins.”

<sup>128</sup> No examples are readily available from the Deschutes National Forest.

<sup>129</sup> Historic American Buildings Survey, National Park Service, Western Region, Department of the Interior. *Frank-Jensen Summer Home (Yarger Cabin): Photographs, Written and Historical Data*, HABS No. WA-207. April 1994, 1.

<sup>130</sup> *Ibid.*, 11

<sup>131</sup> *Ibid.*

### *Fees*

Perhaps the least harmonious aspects of Forest Service – permit holder interactions have been centered around the subject of user fees. At the start of the program, the annual fees charged for the special use permit were minimal – according to Cleator they were “between \$10 and \$25 dollars per year.”<sup>132</sup> According to the Hosmer family tradition, the first fees paid for their cabin were only six dollars.<sup>133</sup> This is in agreement with Hatton’s claim that the initial cost for permits for the lots on the Deschutes National Forest ranged from five to fifteen dollars per year.<sup>134</sup> The general consensus of both the Forest Service and cabin owners is that the fees continued to be quite low, perhaps even disproportionately low, until the last few decades. As late as September of 1997, the Portland *Oregonian* reported that:

The General Accounting Office reported late last year that undervaluation of the federal lots was costing the government and counties tens of millions of dollars a year. Even though values were adjusted annually to reflect inflation, they failed to keep up with escalating land prices during the past two decades.<sup>135</sup>

The NFH argues that the program currently generates an income of approximately ten million dollars, which more than covers the costs of administering the program, “according to the Forest Service’s own accounting.”<sup>136</sup>

Because the federal policy was to reappraise the recreation residence lots every twenty years, permit fees often did not “keep up” with inflation, with the result that the fees might jump considerably higher when new appraisals went into effect. The Cabin User Fee Fairness Act (CUFFA) was passed by Congress in October of 2000, in an effort to correct what many cabin owners felt to be a problematic system of administering fees. Congress states that the Act is designed to “provide for the return of fair and reasonable fees to the Federal Government for the use and occupancy of National Forest System

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<sup>132</sup> Cleator, *Summer Homes in the National Forests of Oregon and Washington*, 8.

<sup>133</sup> Leslie Skelton, interview.

<sup>134</sup> Hatton, 178.

<sup>135</sup> Portland *Oregonian*, Peter Sleeth, “US Forest Land Rents Will Go Up – WAY UP!”, September 5, 1997.

<sup>136</sup> National Forest Homeowners, “NFH Facts”, <http://www.nationalforesthowners.org> (accessed May 25, 2009).

land under the recreation residence program, and for other purposes.”<sup>137</sup> The introduction to a 1999 draft of the Act demonstrates the sympathy of Congress with the cabin owners:

Cabin use fees have traditionally generated income to the Federal Government in amounts significantly greater than the Federal cost of administering the program. . . The rights and privileges granted to owners of cabins authorized under the program have steadily diminished while regulatory restrictions and fees charged under the program have steadily increased. . . The current fee determination procedure has been shown to incorrectly reflect market value and value of use.<sup>138</sup>

In addition to requiring the appraisal process to be performed every ten years, rather than every twenty years, CUFFA requires the appraisals to take a number of considerations, such as the accessibility of the residences (due to weather and road conditions, for example) and special use permit restrictions, into account.<sup>139</sup> The appraisals do not include the structures on the lots.<sup>140</sup> The appraisals are used to calculate the base cabin user fee, which is 5% of the appraised value of a “typical” lot, with a yearly increase (not more than 5% of the base fee per year<sup>141</sup>) designed to account for inflation.<sup>142</sup> It should be pointed out that the cabin user fees go directly to the U.S. Dept. of the Treasury, not the local branch of the Forest Service.<sup>143</sup>

In an interview with the Bend *Bulletin* in 2008, Jim Sauser confirmed that at that time, most cabin owners paid annual fees of \$1000 to \$1500. Although an appraisal had taken place in 1999, it had not been implemented, and so these fees were based on the appraisals performed in 1980. Sauser stated in the interview that, although appraisals had again taken place in 2008, the 2009 fees would be based on the 1999 appraisals, which were conducted according to pre-CUFFA standards.<sup>144</sup> The increase in the value of the lots between 1980 and 1999, however, is still considerable, resulting in higher permit fees. Forest

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<sup>137</sup> U.S. Congress. House of Representative. A draft of *Cabin User Fee Fairness Act, H.R. 3327*, 106<sup>th</sup> Congress, 1<sup>st</sup> sess., November 10, 1999.

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*

<sup>140</sup> Sharon Karr, interview.

<sup>141</sup> U.S. Forest Service, *FSH 2709.11 – Special Uses Handbook: Chapter 30 – Fee Determination*, (effective September 19, 2006), 20.

<sup>142</sup> *Ibid.*

<sup>143</sup> Keith Chu, “Own a House on Forest Service Land? Be Ready For Higher Rent,” *The Bend Bulletin*, August 8, 2008.

<sup>144</sup> Aubrey King of NFH, as quoted in “Pay Fair Price for Cabin Sites,” *The Bend Bulletin*, January 13, 2009.

Service employee Jeff Sims explained, “In the late ‘90s, the value of rural parcels started going way up, and that’s when the sticker shock first started happening.”<sup>145</sup> The article noted that “The government originally charged only a token fee but later changed increased fees to levels similar to renting private cabins.”<sup>146</sup> Speaking of the increased value of the lots, along with the increased permit fees, Sauser commented that “Certainly, the old real estate axiom of location, location, location applies.”<sup>147</sup>

Also noted by some was the high price at which many owners were able to sell their cabins. Roger White, the owner of a store in Metolius area, although opposed to fee increases, commented to the *Bulletin* that some cabins “have been bought and sold in high prices in recent years,” and a local realtor remarked that, due to their popularity and scarcity, “you used to have to buy them over the phone,” although demand had gone down due to the worsened economy.<sup>148</sup> On the Metolius Tract, Forest Service employee Jeff Sims observed that cabins may sell for prices in the range of \$300,000 to \$500,000.<sup>149</sup> According to Linda Barron of Crescent Realty, a cabin sold at Crescent Lake in November of 2008 for \$500,000, a price which is significant considering the lack of property rights and restrictions of the special use permit.<sup>150</sup> However, the cabins tend to be kept for many generations within a family, and sales are relatively rare, so the value of the cabin may be a moot point for those who have no desire to part with their cabin.

Many cabin owners feel that the fees are not fair and cite problems with CUFFA. The *Bulletin* quotes National Forest Homeowners lobbyist Aubrey King as affirming that CUFFA “is not working out as intended,” a sentiment echoed by many of the cabin owners.<sup>151</sup>

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<sup>145</sup> Scott Hammers, “Cabin Fee Increase Lowered,” *The Bend Bulletin*, January 12, 2009.

<sup>146</sup> Ibid.

<sup>147</sup> Keith Chu, “Own a House on Forest Service Land? Be Ready For Higher Rent,” *The Bend Bulletin*, January 12, 2009.

<sup>148</sup> Scott Hammers, “Cabin Fee Increase Lowered,” *The Bend Bulletin*, January 12, 2009; Ponderosa Properties (real estate in Metolius area), interview by author, May 16, 2009.

<sup>149</sup> Jeff Sims, interview.

<sup>150</sup> Linda Barron, Cascade Realty, interview by author, May 16, 2009.

<sup>151</sup> *The Bend Bulletin*, “Pay Fair Price for Cabin Sites”, January 13, 2009

These proposed rate increases have become a topic of heated debate. King told the *Bend Bulletin* in January of 2009 that fees would be expected to go up 50-500% with the 2009 fees. The article stated that fees were expected to rise about 85% for some Metolius cabin owners.<sup>152</sup> On Elk Lake, Dale Tigner's 2009 cabin fee was \$4900, a significant increase from the previous year's fees.<sup>153</sup> On January 12, however, the *Bend Bulletin* reported that the Undersecretary of Agriculture under the outgoing Bush administration, Mark Rey, suspended the scheduled fee increase, citing a need to "revisit" CUFFA, and said that the fees would only be 2% higher than previous years.<sup>154</sup> Interestingly, King "credited Ron Wyden, D-Ore., chairman of the Senate Public Lands and Forests Subcommittee, for leading the effort to reverse the fee increase. Wyden led a group of five senators in writing a letter to Rey asking him to hold off on collecting fees based on reappraisals of the cabins."<sup>155</sup> In April, however, the new Secretary of Agriculture, Tom Vilsack, revoked the moratorium, based on information from the Office of Government Council that only Congress – not the Forest Service – had the authority to suspend the fee increase.<sup>156</sup>

The most recent development in this series of events has come in the form of a letter from members of Congress to Secretary of Agriculture Tom Vilsack, dated May 6, 2009, which supports the position of the cabin owners. The letter, signed by nineteen members of Congress, stated the intention to:

. . .make you aware of the U.S. Forest Service misinterpretation of the Cabin User Fee Fairness Act of 2000. . .With recent significant increases of some special use cabin permit fees, several owners have indicated that they can no longer afford to keep their cabins. We are concerned that responsible cabin owners with multi-generational ties to their respective areas may simply be replaced by wealthier, vacation home buyers. . .We request immediate action directing the U.S. Forest Service to adhere to Congressional intent. Specifically, we ask that USFS update its regulations and appraisal protocol for special use cabin permits. This action is necessary to alleviate the negative impacts faced by forest cabin owners across the country and to prevent the removal of countless private stewards from our public lands.<sup>157</sup>

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<sup>152</sup> Scott Hammers, "Cabin Fee Increase Lowered," *The Bend Bulletin*, January 12, 2009.

<sup>153</sup> Dale Tigner, interview.

<sup>154</sup> This was stated more explicitly in the *Seattle Times* article "Cabin Owners Get Break in Lease Increases" by Associated Press writer Susan Gallagher, January 8, 2009.

<sup>155</sup> Scott Hammers. "Cabin Fee Increase Lowered," *The Bend Bulletin*, January 12, 2009.

<sup>156</sup> Sharon Karr, interview; Oregon Forest Homeowners Association website, "Current Issues," Sharon Karr, <http://www.oregonforesthowners.com/fee%20moratorium%20memo.html> (accessed June 7, 2009).

<sup>157</sup> Letter from members of Congress to Secretary of Agriculture Honorable Tom Vilsack, May 6, 2009.

These events over the past year have elicited renewed interest in the program and interesting commentaries from both sides of the debate regarding the nature of the program in general. Cabin owners and those sympathetic to the program commonly state concerns that fee increases will no longer make the program available to middle class permit holders, making the program, in the words of Dale Tigner, “an elitist thing.”<sup>158</sup> Mark Dohrmann, noting that cabin owners also pay county taxes on improvements to the lot, states that as fees increase, “only the wealthy will be able to afford cabins,” while Leslie Skelton, the granddaughter of Paul Hosmer, feels that the fees are going to mean that “some families can’t keep their cabins for sure.”<sup>159</sup> Bill Kennedy, a cabin owner at Crescent Lake since 1992 and the president of the OFHA, was quoted by the Klamath Falls *Herald and News* on May 5, 2009, as saying that he “is receiving almost daily reports from owners who will probably have to sell. ‘We cannot afford the new fee so we’ve got to figure out what we’re going to do. . . What if owning a cabin just becomes an elite privilege?’”<sup>160</sup> The Medford *Mail Tribune* opines,

There’s nothing fair about the U.S. Forest Service’s effort to set “a fair market value” on cabins in federal forests. The move instead adds to a disturbing trend of putting more recreational opportunities in the hands of the well-to-do at the expense of citizens of lesser means. . . Tom Knappenberger, a media specialist with the Forest Service, says the act is intended to produce a “fair market basis for the privilege of having these residences”. . . In the new world being cast by the Forest Service, it will indeed be the privileged few who have access to all the recreational opportunities of this country’s public lands. And that’s just wrong.<sup>161</sup>

In testimony given in Congress prior to the passing of CUFFA, these same general sentiments were echoed in the statement by Hon. Ron Wyden, U.S. Senator from Oregon, highlighting what almost seems to be viewed as a class struggle:

. . . the folks who own these cabins have held them in their families, in the vast majority of cases, for several generations. In many cases, their ancestor who initiated the permit was solidly in the middle class; to a very large extent, these were working people who

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<sup>158</sup> Dale Tigner, interview.

<sup>159</sup> Mark Dohrmann, interview; Leslie Skelton interview.

<sup>160</sup> Lee Huillera, “Recreation Rising: The Cost of That Family Lake Cabin Is Going Up,” *Klamath Falls Herald and Tribune*, May 5, 2009.

<sup>161</sup> *Medford Mail Tribune* editorial, “Forest Cabins: Average Joes Need Not Apply.” April 8, 2009.

took advantage of a unique opportunity to own a cabin in the woods. But we should also keep in mind that if we require an exorbitant payment, about the only sure result will be that, as is already happening too often in the West, ownership of a cabin will become the exclusive purview of the wealthy.<sup>162</sup>

Some, however, take the opposite view, arguing that the recreation residence program is by its nature “elitist”, particularly as no new lots are available to the public. For instance, a response to the above editorial, which was posted on the newspaper’s website, disagreed: “Come on [Mail Tribune]. A lease is temporary ownership rights. Not a permanent right to valuable property at a cheap price. Buy fee simple if you want long term ownership. There are a handful of cabins that many would like. Let the market prevail.”<sup>163</sup> A *Bulletin* editorial dated January 13, 2009, had the following to say:

A small number of property owners in Central Oregon enjoy a unique privilege. They own cabins built on property leased from the U.S. Forest Service, which is to say you and me. . . We still have more than a sneaking suspicion that many, perhaps most, Forest Service lease rates are a colossal bargain. . . Cabin owners are entitled to contest the law that sets their fees, and Congress ought to listen to their concerns. In the end, however, Congress has a responsibility to protect the public’s interest. That means requiring those who lease Forest Service cabin sites to pay the public fully for the use of its land, whether cabin owners like it or not.<sup>164</sup>

#### Overview of Relationship with Forest Service

*“The day has passed when you – and your neighbors – can pretend the relationship between the Forest Service and cabin owners will always be comfortable and collaborative. . . The good old days are over!”* - NFH website

*“The Forest Service is a very good landlord.”* – Sharon Karr, permittee and secretary of the Oregon Forest Homeowners Association.

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<sup>162</sup> Hon. Ron Wyden. *Hearing on S. 2513*. U.S. Congress. Senate Committee on forests and Public Land Management of the Committee on Energy and Natural Resources. 105<sup>th</sup> Congress, 2<sup>nd</sup> Sess., 1998.

<sup>163</sup> *Medford Mail Tribune* website, “grampa”, <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20090408/OPINION/904080309>. Accessed May 19, 2009. Note that the statement of “lease” is incorrect.

<sup>164</sup> *The Bend Bulletin* editorial, “Pay Fair Price For Cabin Sites,” January 13, 2009.

As illustrated by the topics of regulations, historic designation, and fees, as well as by the quotes above; the relationship of federal landlord to permittee has been of a very complex, often conflicting, and somewhat tenuous nature over the course of the program's history, particularly in the last decade. Described by permittees on the Deschutes National Forest in terms such as "iffy," "very difficult," "historically an uneasy one", and even "like dancing with porcupines,"<sup>165</sup> it is a relationship in which the lines demarcating "yours" and "mine" have often seemed rather blurred, or at least considerably entangled, and in which there has often been a great deal of confusion.<sup>166</sup> Many cabin owners complain that the Forest Service does not have clear directives, while others are frustrated by the sheer number of directives.<sup>167</sup> Some cite difficulties with conflicting directions from different officials within the agency, or uneven application of the regulations.<sup>168</sup> However, permittees also point out that good relationships often exist with local Forest Service employees. And, As Dohrmann puts it, "If you don't like the rules, you can turn your permit in and go somewhere else."<sup>169</sup>

Vella Munn, a cabin owner on Diamond Lake in southern Oregon, contrasts the positives and negatives of the relationship in her article *When Big Brother is Your Landlord*. Munn says that the Forest Service is "no typical landlord. . . [the USFS] has a larger mission and many interests to juggle."<sup>170</sup> The relationship, according to her, has "some plusses and many minuses."<sup>171</sup> However, she notes, the Forest Service pays to protect the natural resources which cabin owners enjoy. For instance, when Diamond

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<sup>165</sup> Tigner, interview; Cleveland, interview; Skelton, interview; Dohrmann, interview.

<sup>166</sup> It seemed from the research and interviews performed for this paper that a number of permittees often felt some degree of entitlement in terms of a right to occupy the land, and often resented restrictions. They felt quite literally "grandfathered in," based on the extensive amount of time which their families have occupied the land. This cannot be generalized, however; permittees such as Tigner and Dohrmann are quick to point out that they feel privileged to possess such a permit.

<sup>167</sup> Tigner, interview.

<sup>168</sup> Cleveland, interview; Leslie Skelton, interview.

<sup>169</sup> Dohrmann, interview.

<sup>170</sup> Vella Munn, "When Big Brother is Your Landlord: The Plusses and Minuses of Not Owning the Land Under Your Cabin," *Cabin Life*, accessed through National Forest Homeowners website, <http://www.nationalforesthowners.org> (accessed May 25, 2009).

<sup>171</sup> Ibid.



Lake became infested with an invasive species of fish which threatened native species, the Forest Service launched a large and expensive program to eradicate it. Munn writes:

Those of us who remember the heady and soul-enriching days when Diamond [Lake] was indeed the “jewel” of the Cascades” know we’d never stand a chance of regaining that distinction without our landlord. One hundred and three cabin owners would have a hard time footing the bill for a multi-million dollar effort. . . Big Brother is here to stay. And sometimes only Big Brother has the necessary resources to protect and defend our beloved surroundings. Just, please don’t raise the rent too much.<sup>172</sup>

It appeared from interviews conducted with Forest Service employees that they, in general, feel somewhat more amicable towards the permittees than the permittees feel toward the Forest Service. The *Recreation Residence Review* also reported that “Most units claim good relationship with their [recreation residence] permittees.”<sup>173</sup> Perhaps this is due to the fact that the program cannot grow, and if anything, will diminish in size in the future, a circumstance which likely placates opponents of the program. Additionally, several employees emphasized that they appreciated the historic and cultural value of the program. However, Forest Service employees do not hesitate to point out that they have a duty to administer National Forest land in the interests of the general public. And, permittees are a relative minority in the general public. In response to the frustration of many permittees with Forest Service regulations and fees, Jim Sauser is quoted by the *Oregonian* as stating, “Over time, people think of them [the permits] as less and less of a privilege, but still, they are a privilege.”<sup>174</sup> Hickerson’s personal opinion as a private citizen is that “recreation residence permit holders have a special privilege that comes with certain obligations. . . The recreation rental program is not managed for the benefit of the public, it is being done for the benefit of the individual permit holder.”<sup>175</sup>

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<sup>172</sup> Ibid.

<sup>173</sup> U.S. Forest Service, *Recreation Residence Review*, 8.

<sup>174</sup> Larry Bingham, “Cabin Fever: The Lure of Rustic Retreat in an Old-Growth Forest Fuels a Love Affair with a Deep History – and Uncertain Future,” *The Oregonian*, March 16, 2008.

<sup>175</sup> Leslie Hickerson, interview.

### Permit Holder – Public Interactions

In contrast to permit holder – Forest Service interactions, the interactions between permit holders and the general public seem to be, for the most part, quite uneventful. According to Forest Service employee Jeff Sims, public opposition is not very significant.<sup>176</sup> This may be due to the fact that, as acknowledged by everyone involved, a large portion of the public, and of any would-be opponents, is completely unaware that the program exists. Mark Dohrmann acknowledges that private individuals might question, “How did the Forest Service get into the business of leasing our land?”<sup>177</sup> Dohrmann feels that because of an unawareness of the fact that the public is not precluded from the access to and use of the land where cabins are found, some of the public may feel intimidated or feel that the program is unfair. The key to this, he feels, is a better understanding by the public of how the program functions, and the rights to the land which the general public retains.<sup>178</sup> According to Sharon Karr, some environmental groups oppose the program - for instance, an environmental group at Diamond Lake recently requested, unsuccessfully, that the cabins there be removed – but opposition by these groups has not been strong.<sup>179</sup> Again, perhaps this is due to the relatively small and likely decreasing size of the program.<sup>180</sup> While people walking on the footpaths along the shore of the lakes or the Metolius River may notice the cabins, many probably assume that the land is privately owned. Unlike the cabin owners, who are very aware that the public has free right to use the land which their cabins sit on – so that theoretically members of the public could have a picnic right outside their doorstep - people tend to treat it as private property, and so possible conflicts of use are generally avoided. This is reflected by what Vella Munn writes in her “When Big Brother is Your Landlord”: “We can only grit our teeth when the general public hikes, camps or picnics on the land

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<sup>176</sup> Sims, interview.

<sup>177</sup> Dohrmann, interview.

<sup>178</sup> Mark Dohrmann, interview.

<sup>179</sup> Sharon Karr, interview.

<sup>180</sup> The program is estimated by the NFH to occupy only 1/1000<sup>th</sup> of a percent of national forest land. National Forest Homeowners, <http://www.nationalforesthowners.org>, (accessed May 25, 2009).

between the cabin structures. Granted, most of the time that isn't an issue because people either respect our privacy or assume we own the land, but the lack of privacy can be unsettling at times."<sup>181</sup>

Although user conflicts are relatively rare, some situations are not clear-cut. For example, Dale Tigner expressed concern that people might use the family's dock in the family's absence, and the possibility of a liability issue if someone were to be hurt.<sup>182</sup> While the dock, like the cabin, is private property, this may not be apparent to people walking along the shore of the lake. Similarly, Cleveland referred to an incident in which intoxicated people were using the family's dock while the family was there, which resulted in the family calling the police.<sup>183</sup> Both Tigner and Cleveland say, though, that they generally have a very good relationship with the public, and enjoy visiting with the people who pass by their cabins. Dohrmann, as well, emphasizes that cabin owners on the Metolius are "delighted by the sounds of people" recreating along the river; it is "very special."<sup>184</sup>

#### Sense of Identity, Community, Stewardship

The final element to examine in the history of the recreation residence program is the unique ties which have developed between long time permit holders, as well as with the land they occupy. Families have often participated in the program so long that they could be seen as a cultural resource in the history of those areas of national forests. Cabin owners emphasize that they have invested a great deal of themselves in the national forests, and so have come to have a unique sense of identity and connection to the places which they frequent. Brad Aspell, a cabin owner on Lake of the Woods in southern Oregon, told the Klamath Falls *Herald and News* that he spent a large portion of his childhood at his family cabin,

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<sup>181</sup> Vella Munn, "When Big Brother is Your Landlord."

<sup>182</sup> Dale Tigner, interview.

<sup>183</sup> Berta Cleveland, interview.

<sup>184</sup> Mark Dohrmann, interview.

and even met his future wife at the lake. He commented of the family cabin, “It is virtually our sole recreation. It is a place we all come together. It is a place that is irreplaceable to all of us.”<sup>185</sup>

The cabin owners argue that as a result, a sense of stewardship has developed among them which is valuable to the Forest Service and to the general public.<sup>186</sup> As seen earlier, a strong sense of community is often found in the recreation residence tracts, and cabin owners create tract associations to protect their interests and address their needs. Cabin owners point out that this force, comprised of people who have a strong stake in the future of the areas in which they recreate, can be put to use to protect natural resources, and preserve the history of those places. Speaking of this, the NFH maintains,

This “place based” intergenerational memory represents a resource in the protection and preservation of the forests which are shared by cabins. Through the memories of cabin families, it is possible to revisit what areas look like 20, 30, 40, or 50 or more years ago. They [cabin owners] are a vital part of the local management in forests where effective partnerships exist between the Forest Service staff and the cabin communities.<sup>187</sup>

Local cabin owners strongly echo this sentiment. Leslie Skelton says that “when deeply connected to a place,” a “sense of stewardship” results, which she feels to be “an important feature of what happens when you go to a place over time.”<sup>188</sup> She says that while many members of the general public care about issues affecting the lakes, they aren’t organized to effectively address issues in the way that cabin owners are.<sup>189</sup> Mark Dohrmann feels similarly about the situation on the Metolius, stating that there is a “sense of real community in Camp Sherman,” and that cabin owners are “good stewards of the land.”<sup>190</sup> He notes that they often assist in activities such as reducing fire hazards. This idea is even echoed by Congress in their May 6, 2009 letter to Tom Vilsack, in which they state that: “These family cabins have provided

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<sup>185</sup> “Cabin Owners Recall Many Decades of Fond Family Memories,” *Klamath Falls Herald and News*, May 5, 2009.

<sup>186</sup> The idea that those who have personal interests vested in public land – such as by a special use permit held for a long amount of time – are especially valuable stewards of and advocates for that land, is known as “free market environmentalism,” and is outlined by Karl Hess, Jr, in his book *Visions Upon the Land: Man and Nature on the Western Range*, published by Island Press (Washington D.C., 1992).

<sup>187</sup> National Forest Homeowners website, “Historic Summary.”

<sup>188</sup> Leslie Skelton, interview.

<sup>189</sup> Leslie Skelton, interview.

<sup>190</sup> Mark Dohrmann, interview.

multiple generations with a stake in the health of our forests. Their owners are important partners for our public agencies.”<sup>191</sup>

On the Metolius, this sentiment has been brought to the forefront lately, as cabin owners and those in sympathy with them seek to distinguish the recreation residences from the destination resorts recently proposed for the Metolius Area. The *Bulletin* gives the following example of this sense of identity, along with an associated sense of stewardship:

Frances Hogan’s father signed a lease from the Forest Service in 1938. The family has had weddings, funerals, and baptisms near the river. The Hogans have spent summers, Christmases, and Thanksgivings together in their Camp Sherman cabin. The 80 year old woman said she’s worried the resorts would bring in people who don’t have the same interest in the Metolius.<sup>192</sup>

In *Location, Location, Location*, Dan Gildor acknowledges the element of a sense of identity in the experience of the permittees as very important to consider when evaluating the program. He discusses the application of the idea of “personhood,” as described by Margaret Jane Radin, to the program. He says that by their relationship with the land, the land has become “part” of the permittees, theoretically giving them a kind of special ownership right to the land. Although Gildor is opposed to the program, saying that it “represents an obstacle to greater public enjoyment of national forests,” he says, quoting Radin at times, that this concept of personhood “is significant, for ‘people and things become intertwined gradually.’” Gildor says this experience ‘creates personal integrity and lasting memories’ through the hardships and challenges endured while in the forests. . .Applying Radin’s standard, then, the Forest Service should be restricted in its ability to invade the permit holder’s property rights.”<sup>193</sup> Once again, this discussion underscores the very unique and complex nature of the recreation residence program.

### Revisiting the Program’s Role Today

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<sup>191</sup> Letter from members of Congress to Honorable Tom Vilsack, May 6, 2009.

<sup>192</sup> Lauren Dake, “Calm Before the Storm,” *The Bend Bulletin*, September 21, 2008.

<sup>193</sup> Dan Gildor, *Location, Location, Location*, 1033; *Ibid.*, 1016-1017.

What role, then, does the recreation residence program play in today's society? Recreation and the use of National Forests present, in many ways, a completely different picture than they did when the program was instituted in 1915. It would seem that the original intention of the government to "get people out into the woods" has been quite a success, so much so that many are now arguing for ways to get people out of the woods. Now that forest recreation areas, including the areas where many tracts are located, are in high demand for recreational use, has the program outlived its purpose? Gildor argues that it has, and that the program is now problematic due to its exclusive nature, saying, "The Recreation Residence Program is a government program that benefits a small segment of society. Only a few, who, through family inheritance or intelligent past investment, currently hold recreation residence permits are able to enjoy the benefits of a summer home on prime forest service land."<sup>194</sup> He states further that,

Instead of being a public gateway to the national forests, the program has become a bastion of property rights advocates and an obstacle to greater public enjoyment of the national forests. While originally responsive to recreation demands, the program is no longer responsive to maintaining natural and historical resources and promoting public recreation in the national forests."<sup>195</sup>

Gildor says that "Many permit holders have become entrenched over time, resorting to political pressure to block Forest Service attempts to shift recreation residence tracts to other uses."<sup>196</sup> Furthermore, "The permittees also have a political trump card: the historically romantic portrayal of the back to nature movement that plays so well in the popular press."<sup>197</sup> As a result, he maintains, Congress is favorable to cabin owners, citing what he describes as a "typical statement" by a congress member which characterizes permit holders as "part of the West's rich cultural heritage."<sup>198</sup> "Any changes to the

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<sup>194</sup> *Ibid.*, 1009

<sup>195</sup> *Ibid.*, 995.

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*, 1013.

<sup>198</sup> *Ibid.* This same congress member, (Rep. Helen Chenoweth, R-ID), at the time the chair of the House subcommittee on Forests and Forest Health, stated in support of the program that she "will not be any party to any policy that deprives the middle class of their historic right to recreate on our national forests." (*Ibid.*, 1014)

Recreation Residence Program adversely affecting permit holders,” Gildor argues, “are easily characterized as undemocratic and unfair.”<sup>199</sup>

The political force behind the program, together with the proactive attitudes of the permit holders, makes it likely that the recreation residence program will continue for some time into the future, although it cannot grow. If the original purpose of the program is no longer relevant, however, what is the current role of the program? For the permit holders, it arguably continues to function as the “frontier” described earlier, as evinced by the NFH statement that, “The cabins will continue to fulfill an important role in modern society: that every so often one has to go back to the basics, to reestablish a connection with the natural world.”<sup>200</sup> In today’s society, however, there are many less exclusive recreational opportunities which could be seen as filling this need more appropriately.

Perhaps, however, as the program has evolved, so has its role in society. It seems from conversations with all those involved that, especially as the program cannot grow, there is a strong value placed on the program as a representation of a past era, and a historical and cultural resource which has become an important part of the history of those areas of National Forests – in the view of some, something in need of preservation. Often we try to preserve items which represent unique circumstances in history which may or may not have been otherwise desirable for any number of reasons at the time in history when they were at their peak. It is interesting how our perspective often changes when something whose existence many people may have been opposed to is declared to have some kind of unique historical value. If this is the case with the recreation residence program, the caveat being that the program does not expand, perhaps these are the “new” standards by which the merits of the program will be judged in the future. Certainly, the history of the recreation residence program on the Deschutes National Forest provides valuable insights into the history of the public’s relationship with natural resources in Central Oregon.

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<sup>199</sup> *Ibid.*, 1013.

<sup>200</sup> National Forest Homeowners website, “Historic Summary.”

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U.S. Forest Service. Pacific Northwest Region. Map. "Ft. Rock Ranger District." Portland: Pacific Northwest Region, 1964. University of Oregon Knight Library, Map Library, Eugene, Oregon. Map includes Paulina Lake.

U.S. Forest Service. Pacific Northwest Region. Map. "Metolius and Sisters Ranger District." Portland: Pacific Northwest Region, 1964. University of Oregon Knight Library, Map Library, Eugene, Oregon. Map includes Camp Sherman area of Metolius River where recreation residences are located.

### *Aerial Photography*

U.S. Department of Agriculture. Aerial photograph of Elk Lake, 1979. Maps and Aerial Photography Collection, University of Oregon Knight Library, Eugene, Oregon.

### *Other*

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### Appendix A: Figures

Figure 1 (pg. 9): This photograph, taken from the pamphlet, was intended as an illustration of the type of summer home idealized by the visionaries of the recreation residence program. Source: Fred W. Cleator, *Summer Homes in the National Forests of Oregon and Washington*, (USDA Forest Service, North Pacific Region, issued 1932, reproduced at the National Archives and Records Administration, Seattle), 2.

Figure 2 (pg. 11): Map of recreation residence tract locations along Metolius river. Source: U.S. Forest Service. Deschutes National Forest. *Metolius Wild and Scenic River Management Plan: Final Environmental Impact Statement*. October 1996, xii. Reproduced with permission.

Figure 3 (pg. 17): Survey of a tract at Crescent lake. This is *not* the Crescent Lake Townsite. Source: Deschutes National Forest. Tract survey for Crescent Lake, sheet 5 of 6, recreation residence lots 54-73, 1947.

### Appendix B: Tables

Table 1 (pg. 12): Number of permits per tract on Deschutes National Forest Source: Richard Wesseler, Special Uses Administration, U.S. Forest Service, Bend-Ft. Rock Ranger District, Bend, Oregon. Interview by author April 15, 2009.

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