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**FSH 2709.11 – SPECIAL USES HANDBOOK
CHAPTER 40 – SPECIAL USES ADMINISTRATION**



**FOREST SERVICE HANDBOOK
CUSTER NATIONAL FOREST (REGION 1)
BILLINGS, MONTANA**

FSH 2709.11 – SPECIAL USES MANAGEMENT

CHAPTER 40 – SPECIAL USES ADMINISTRATION

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41.23 - Provides Forest-level direction for the administration of recreation residence authorizations on the Custer National Forest.

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41.23 - Recreation Residence Permit Administration on the Custer National Forest

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41.23 A. INTRODUCTION

A.1. Forest Service Service-Wide (National) Directives

This Forest Service Handbook (FSH) Supplement provides Custer National Forest-specific clarification for the administration of Recreation Residence Special Use Permits. It is based upon and provides more specifics for the following existing Service-Wide Directives:

Forest Service Manual (FSM) - Service-wide Directives:	
FSM 2347	Non-Commercial Recreation Use; Recreation Residence policy on use;
FSM 2704.34	Authorities, Definitions
FSM 2721	Special Uses Management;
FSM 2721.2	Privately owned recreation facilities permitted to individuals for their use.
FSM 2721.23	Recreation Residence Administration
2721.23	Permit Preparation
Forest Service Handbook- Service-wide Directives:	
FSH 2709.11, Section 33:	Recreation Residence definitions; fee determinations; typical lots; appraisals
FSH 2709.11 41.23a	Permit Continuance
41.23d	In-Lieu Lots
Code of Federal Regulations 36 CFR 251.51	

A.2. Objectives of Permit Administration

These standards and guidelines cannot be expected to cover all situations that might arise in the administration of recreation residences. The guidance in this document conveys the intent of joint Forest Service/permit holder management of the area. It should be understood that prior approval is required for all proposed changes including repairs; replacement of existing structures or improvements, exterior cabin modifications and modifications to the permitted lot.

- a. Ensure compliance with the terms and conditions of the Special Use Permit.
- b. Ensure compliance with the Operation and Maintenance Plan. Clause III.A of the Permit requires the preparation and incorporation of an Operation and Maintenance Plan. This Forest Service Handbook Supplement, along with the Permit's Operation and Maintenance Plan, provides direction to the Authorized Officers and the Holders.
- c. Ensure compliance with the Custer National Forest and Grassland Land and Resource Management Plan (Custer Forest Plan).
- d. Ensure compliance with all applicable laws, regulations and policies, including federal, state and county.
- e. Protect National Forest resources such as archeological and historical resources, sensitive plant and animal species, water quality, soils, and fish habitat.
- f. Protect the Forest setting by limiting urbanization.
- g. Help provide for the safety of the holders and the general public.

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- h. Provide consistent direction for the administration of these permits on the Custer National Forest.

A.3. Definitions

- a. **Authorized Officer.** The District Ranger is the Forest Service Officer who is authorized to issue, sign and administer recreation residence permits on the Custer National Forest. The District Ranger may designate a Permit Administrator to administer recreation residence permits.
- b. **Holder.** The person, married couple or trustee (representing a family trust or living trust) who has applied for, received and signed as the holder of a Recreation Residence Special Use Permit.
- c. **Improvements.** All features constructed or maintained by the holder or previous holders, such as, but not limited to buildings, driveways, roads, bridges, water lines, septic systems, drain fields, vaults, decks, constructed barbeques, woodsheds, toilets, garages, storage buildings, gates, signs, rock walls, leveled or graded areas, pathways, etc. that are authorized by the permit.
- d. **Recreation Residence.** A privately owned dwelling within an established recreation residence tract or group on National Forest System land, authorized for maintenance and use under a special use permit. A vacation structure authorized for the purpose of facilitating the use and enjoyment of related National Forest lands and recreation resources by holders, their families, and guests. A recreation residence is not intended for use as the primary or permanent residence of the owner.

41.23 B. SALE OF THE IMPROVEMENTS / ISSUANCE OF NEW PERMIT

- a. The authorization period for a permit is a maximum of twenty years. During that twenty-year period, a new permit may be issued upon change of ownership of the improvements and will be given the same expiration date as the original twenty-year Permit.
- b. Conditions that will require the issuance of a new permit are:
 - 1. Transfer or sale of the improvements.
 - 2. Adding or removing a name from the Permit, resulting from death (except death of spouse already named on the permit), divorce, inheritance or other personal reasons.
- c. The permit and map must be kept up to date with any new improvements or modifications that are authorized, through a permit modification or amendment, along with any applicable conditions.
- d. Sale of a recreation residence on National Forest land involves sale of only the structures and other permitted improvements thereon.
 - 1. Any advertisement of the improvements for sale must specify that the facilities are on National Forest System land, authorized by a special use permit.
- e. Authority to use the land occupied by the improvements is granted by a Special Use Permit signed by the Authorized Officer. The permit is revocable and terminable – it is not a contract or a lease. This permit itself is not transferable. Issuance of the new permit is not automatic. The seller does not have the authority to assure the buyer a new permit will be issued.

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- f. It is the responsibility of the holder to show a copy of the Permit, along with any terms and conditions specific to Permit, to the prospective purchaser.
- g. Holders should be made aware that they must notify the authorized officer in advance when they intend to sell their improvements. At that time the authorized officer should check the permit to determine if any new conditions would be applied to a new permit.
- h. The authorized officer should then inspect the lot to determine if any compliance actions are needed or any conditions require discussion.
- i. If there are conditions or compliance actions needed, the seller and buyer need to determine who will perform the work. If the seller (current holder) performs the work, the Permit Administrator must make a final inspection of the work before issuance of a new permit.
- j. If the buyer agrees to complete the work, a one-year permit may be issued at the discretion of the Authorized Officer. If the work is completed satisfactorily by the end of one year then a permit for the remaining term may be issued.
- k. The seller and buyer should execute Form (2700-3a) "Holder Initiated Revocation of Existing Authorization/ Request for a Special Use Permit or Term Special Use Permit" or request that action in any other written format. This is the official notice to the District Ranger that the holder is selling and requesting that the permit be terminated and a new one issued to the buyer. In addition, a Bill of Sale or other proof of ownership must be submitted.
- l. Sales of improvements that are part of an estate require submission of evidence stating the person signing the relinquishment is the legal heir, administrator or executor of the estate.
- m. Permits are issued in the name of one individual, to a husband and wife, or to a family trust or living trust. The holder of the Permit must be able to demonstrate ownership of the authorized improvements. When the holder is a designated representative of a family or living trust, the holder must be able to demonstrate ownership of the authorized improvements in the name of the trust that they are representing. Permits will not be issued to a commercial enterprise, non-profit organization, business association, corporation, partnership or other similar enterprises, except a tract association may own a caretaker residence.
- n. No more than one recreation residence permit will be issued to a single family (husband, wife, dependent children).
- o. The new holder must discuss terms and conditions of the new special use permit with the permit administrator prior to approval by the authorized officer.
- p. In the case of default of the sale of the property, the authorized officer may issue a new special use permit to the appropriate entity.
- q. Only one permit may be issued for a lot, regardless of ownership splits.

41.23 C. USE OF THE PERMITTED AREA

- C.1. **Non-Exclusive Use:** The special use permit does not grant exclusive use of National Forest land to the holder. The public is allowed free access for all lawful and proper purposes to National Forest System lands by walking across a permitted lot, including roads and driveways. The public does not have the right to enter in or upon, or use structures that are privately owned or constructed by the holder. The Forest Service reserves the right to allow others to use the permitted area in any way that is not inconsistent with the holder's rights and

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privileges under this permit, after consultation with all parties involved. An example of this might be a timber sale contractor removing bug infested trees, or a contractor doing biological studies. (Also see the section below on fencing, gates and signs F 8, i).

- C.2. **Personal, Non-Commercial Recreational Use:** The special use permit authorizes “personal, non-commercial recreation use”. Activities **not** allowed on the lot include:
- a. Advertising the recreation residence for rental.
 - b. Conducting any business, such as real estate sales, firewood sales, etc., from the recreation residence.
- C.3. **Incidental Rental:** The Permit “authorizes only noncommercial recreational use by the holder’s immediate family and the holder’s non-paying guests, other than incidental rental that has prior written approval from the authorized officer pursuant to clause VII.A.”
- a. If “incidental rental” is approved, the holder still remains responsible for compliance with the terms of the permit.
 - b. Incidental rental’ refers to a maximum of 14 days per calendar year. IRS code: Sec. 280A (G) states that income from rental of vacation homes for less than 15 days does not need to be included in the gross income that must be reported. The Custer National Forest shall utilize this IRS code to define ‘commercial use’.
- C.4. **Temporary Expansion of Capacity for Groups:** Recreation vehicles, tents or teepees may be used to expand the capacity of a recreation residence on a temporary basis except in areas where there may be special restrictions. Recreational vehicles must be kept in parking areas on the lot that are approved by the Authorized Officer. For the purpose of temporarily expanding capacity, “temporary” is defined as 16 days to be consistent with Special Order GYCC-5 regarding stay limits, i.e. stay limits apply to recreation residence lots. The location includes the lot and an area within a five mile radius. After leaving the location a minimum of seven days is required before any group or person(s) from that group may reoccupy the original location. Any exceptions to this must be approved by the Authorized Officer.
- C.5. **Vehicle Use and Storage**
- a. Recreational vehicles, cars, trucks, trailers and all other motorized vehicles must be kept within areas authorized by the permit.
 1. Vehicle and trailer storage is not allowed off permitted lots on National Forest land.
 - b. When the residence is not occupied, vehicles and equipment such as RVs, trucks, cars, trailers, campers, boats that require trailers, ATVs, snowmobiles, etc. and inoperable vehicles shall **not** be stored outside of buildings on the permitted lot or tract. Any exceptions to this must be approved on a case by case basis by the Authorized Officer.
 - c. All motorized vehicles, including motorcycles, ATV’s and snowmobiles must stay on roads or trails designated for that use by the current Forest Travel Plan.

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C.6. Threatened, Endangered, Sensitive or Other Species

- a. Prior to issuing approval for any actions or activities, the Authorized Officer shall consider issues that may affect threatened, endangered, sensitive or other species. Refer to the list of considerations in Section G.

- C.7. **Stock Use:** Stock use (horses or other pack animals) in association with recreation residence use is not allowed unless approved by the Authorized Officer. Authorized Officer will take into consideration potential resource impacts, along with potential disturbance to other recreation residents and other nearby recreation sites. No permanent improvements will be approved; any fencing or other features will be temporary and only permitted for the duration of the permitted stock use.

C.8. Cultural and Historical Resources

- a. Prior to issuing approval for any actions or activities, the Authorized Officer shall consider issues and/or proposals that may affect significant cultural and historical resources. See Section D.2.a

41.23 D. HOLDER-PROPOSED CHANGES TO THE AUTHORIZED IMPROVEMENTS

D.1. Process Checklist

- a. The holder must submit a preliminary proposal in writing to the Authorized Officer.
- b. The holder must describe their proposed project in sufficient detail for the Authorized Officer to understand the proposal. The holder is responsible for meeting the Uniform Building Code for all proposals in existence at the time of project submission. For larger or more complex projects, the holder will be required to submit draft designs and must be prepared to alter preliminary architectural drawings to meet any terms and conditions deemed necessary by the Authorized Officer.
- c. Proposals for changes to or replacement of existing structures shall comply with Section F (“Facilities Authorized by the Recreation Residence Permit”) of this document.
- d. Environmental Analysis: The Authorized Officer shall determine the level and scope of the NEPA analysis. Scoping should include appropriate public and neighboring residences.
- e. Cost Recovery: Permit amendments, or any holder-initiated action, are subject to Cost Recovery for processing and monitoring, where the processing work or the monitoring work would require more than 50 hours of Forest Service administrative time. Forest Service shall provide an estimate of the time required and costs involved. Cost Recovery regulations include required response times.
- f. Forest Service Review of the Preliminary Proposal: The Authorized Officer should review the preliminary proposal in a timely fashion to provide the holder with an initial response, along with a list of any clarification or additional information needed from the holder. FOREST SERVICE response time will depend upon the complexity of the proposal and other conditions.

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- D.2. **Resource Considerations:** The Authorized Officer should consult with all appropriate Forest Service resource specialists. The proposal should be consistent with the terms of the special use permit and with this Forest Service Handbook Supplement. Before proceeding on any project that involves altering the external dimensions or appearance of structures, vegetation changes, changing the shape or color of structures or requiring ground-disturbing activities, prior written approval will be required from the Forest Service. At a minimum, initial resource considerations should include the following, with more in-depth analysis where appropriate:
- a. **Cultural and Historic Resources:** Compliance with Section 106 of the National Historic Preservation Act (NHPA): 36CFR 800.
 1. Even though the recreation residence structures are privately owned by the holders, the issuance of permits authorizing them on National Forest land by the Forest Service is defined by the NHPA as an “undertaking” for the purposes of compliance with the Act. The exteriors of Recreation Residences eligible for or listed in the National Register of Historic Places (NRHP) shall be maintained to preserve their historic and architectural values. Interior modifications to Recreation Residences are not subject to this action.
 2. The Forest Service as the permitting agency is required by law to consult with the State Historic Preservation Officer (SHPO) and with the Advisory Council on Historic Preservation (ACHP) to seek ways to avoid, minimize, or mitigate adverse effects to historically significant Recreation Residence properties.
 3. Proposals to **modify** the exterior of recreation residence structures must be completed in consultation with the Custer National Forest cultural resources specialist, Montana SHPO, and the Advisory Council on Historic Preservation as required by the NHPA regulations, unless a determination by the SHPO and the Custer National Forest that the structure is Not Eligible to the NRHP (not historically significant) has already been made. Modifications to structures that have been determined to be Not Eligible should be designed such that they do not affect the eligibility of neighboring structures or of the overall tract.
 4. The document “Recreation Residence Historic Context for Eight National Forests in Region 1 – Custer National Forest” (May 2006) and the Secretary of the Interior’s Standards for the Treatment of historic properties (36 CFR-68) will be used to assess the effects of proposed structural or site modifications, and to develop appropriate mitigation measures in consultation with the Montana SHPO and ACHP.
 5. Some of the salient qualities that have been cited in the “Contextual Document for the History of Recreation Residences” as being important to their historic significance and development in the Northern Region include: tracts and structures that retain sufficient integrity to convey its significance because of its historical associations and/or design qualities; tracts and structures that appear harmonious with nature; tracts and structures that do not dominate key viewsheds such as along lakeshores, scenic byways, highways and trails; and tracts and structures that fit in to the natural landscape and scenery.

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6. The Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" provide definitive guidance in making additions and/or modifications to historic structures.
- b. **Water Quality and Fisheries Resources:** For all proposals to modify or disturb any land or plants near or along a lake, river, stream or bank, the authorized officer shall consult the Forest aquatic specialist. All work must comply with all applicable Federal, State and County permitting requirements. Required permits may include:
 - 24 Permit (MT Fish, Wildlife & Parks)
 - 310 Permit (local conservation district);
 - 318 Authorization (Montana Dept of Environ. Quality)
 - 404 Permit (Army Corps of Engineers)
1. Any modification or disturbance of a river or stream bed or banks, including but not limited to, removal of debris, trees and other vegetation, rocks, dredging, dock construction, riprapping or flood abatement, requires permission from the authorized officer.
 - i. Hand removal of debris that is plugging a culvert, threatening a bridge, road or structure(s) may be accomplished without authorization. However, any mechanical debris removal needs prior approval.
- c. **Scenery Resources:** Authorized improvements must comply with the Visual Quality Objectives (VQO's) as referenced by the Custer National Forest Plan.
 1. Forest Plan Visual Quality Objectives provide management criteria for the scenery resource. To meet Forest Plan standards, recreation residences should not be visually dominant and should appear harmonious with their natural setting, in terms of line, form, color, texture and scale. Where possible, structures should be buffered by terrain or vegetation to views from main roads and should exhibit architectural styles that reflect the site's historic context and sense of place.
- d. **Noxious Weeds:** Authorized ground disturbing projects must comply with policy (FSM 2080, Supplement No.: R1 2000-2001-1¹ and R1 Supplement 2709.11-2000-1 2709.11, 50²) and decisions made in the 2006 Custer National Forest Weed Management EIS³.
 1. **When ground disturbing activities are proposed.** These provisions can be accomplished through the development and incorporation of a supplemental clause or as a requirement in an associated operation and maintenance plan. Anytime that ground disturbing activities are authorized by the permit, include the following provision.

¹ R1 Supplement 2000-2001-1; Effective Date: 05/14/2001; FSM 2080 requires that "weed prevention provisions" be in all special use permits (section 9). Per this supplement we are also to "consider including noxious weed prevention and control provisions, when determined to be necessary by the authorized officer. The necessary weed prevention and control provisions may be included in written plans, specifications, stipulations and/or operation and maintenance plans attached to and made a part of the permit authorization."

² R1 Supplement 2709.11-2000-1 2709.11, 50 (Effective 02/08/2000) outlines direction for weed provisions when ground disturbing activities are proposed.

³ 2006 Custer National Forest Weed Management EIS and Record of Decision outlines authorized herbicides and surfactants, specific required protection measures, and best management practices and are to be used when drafting O&M Plans that have a need for specific to weed prevention and treatment.

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“Noxious Weed/Exotic Plant Prevention and Control. The holder shall be responsible for the prevention and control of noxious weeds and/or exotic plants of concern on the area authorized by this authorization and shall provide prevention and control measures prescribed by the Forest Service. Noxious weeds and exotic plants of concern are defined as those species recognized by state of Montana, Carbon/Stillwater County (<Insert correct county name>), and Custer National Forest in which the authorized use is located.

The holder shall also be responsible for prevention and control of noxious weed and exotic plant infestations which are not within the authorized area, but which are determined by the Forest Service to have originated within the authorized area.⁴

When determined to be necessary by the authorized officer, the holder shall develop a site-specific plan for noxious weed and exotic plant prevention and control. Such plan shall be subject to Forest Service approval. Upon Forest Service approval, the noxious weed and exotic plant prevention and control plan shall become a part of this authorization, and its provisions shall be enforceable under the terms of this authorization.”

2. **Clarification of provision V. Resource Protection, E. Pesticide Use.** For use of herbicides on Custer National Forest System lands, only those EPA registered materials outlined in the 2006 Custer National Forest Weed Management EIS and Record of Decision shall be authorized. When developing operation and maintenance plans involving weed prevention and treatment, applicable protection measures and best management practices outlined in the 2006 Custer Weed Management EIS are required.
3. Anytime use of gravel and/or fill material is proposed, amend the permit with the following clause or O&M provision per FSM 2080 R1 Supplement 2000-2001-1 (Effective Date: 05/14/2001):

“Use of Gravel/Fill Material. To minimize weed spread, all gravel and borrow sources should be inspected and approved before use and transport (as designated by the District Weed Specialist). The source should not be used if the Pit or Stockpile is weed free approved, conditionally approved, or heat treated approved per protocols located in Appendix D of the 2006 Custer National Forest Weed Management EIS.”

4. Anytime there are project proposals for ground disturbing activities, amend the permit with the following clause or apply an O&M provision per FSM 2080 R1 Supplement 2000-2001-1 (Effective Date: 05/14/2001):

⁴ With respect to the second paragraph of the provision, the intent is to apply this provision only for a well defined confined area where it can be determined without a doubt that the noxious weeds resulted from the activities of the holder.

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“Cleaning Equipment. To minimize weed spread, remove all mud, dirt, and plant parts from all off-road equipment before moving into project area. Cleaning must occur off National Forest lands. (This does not apply to service vehicles that will stay on the roadway, traveling frequently in and out of the project area.)”

D.3. Reviews and Approvals

- a. **Multiple Reviews:** The proposal description or drawings may need to be reviewed by the Forest Service more than once as the holder provides additional, refined information.
- b. **Preliminary Approval:** The Forest Service should clearly specify, in writing, if the approval granted is only “Preliminary”, along with a summary of steps the Forest must take, or more information the Forest must receive prior to making a final determination and issuing “Final” approval.
- c. **Proof of compliance** with any county, State, other Federal permitting requirements must be provided, prior to final approval. It is the holder’s responsibility to obtain all permits and provide proof that a project will meet all compliance requirements.
- d. **Final Approval:** The “Final” approval issued in writing or by permit amendment by the Forest Service should specify exactly what is being approved (for larger architectural projects, drawings or plans should be referenced by date or version #). The Forest Service should also list any terms, conditions or mitigations that will be necessary for the holder to follow or be aware of, along with any points at which the Forest Service needs to provide on-site monitoring. Forest Service direction should also include any specifications for off lot activities, such as construction vehicles parking, building supplies storage, etc. For larger projects, the Forest Service might require the holder to sign acknowledgement of the list of terms. Examples of those might include:
 1. The holder remains responsible for ensuring compliance with terms and conditions of the Permit during a construction project.
 2. The construction site must be kept clean and construction debris must be prevented from blowing around. Any required mitigation features, such as silt fences or pollution prevention, must be in place and functioning at all times during the project.
 3. On-site burning or burying is prohibited. All construction waste must be hauled off National Forest land.
 4. Holders must advise their contractors about any applicable Forest rules, like vehicle speed limits, camping rules, potential fire closures, day use-only areas, Food Storage Order, etc.
- e. **Timeframe:** Requests must be made at least six months in advance of the proposed start date. Any construction or landscape modification project must be completed within two years of receiving approval, unless otherwise specified in the approval issued by the District Ranger.
- f. **Monitoring:** It is the responsibility of the holder to ensure compliance with the final approved design. The special use permit administrator should monitor the work in progress, especially for large architectural projects, to ensure compliance with the approved project. Since these type of projects often occur during the middle of summer

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season when Forest Service staff may be occupied with work that must take precedence, such as fires, a holder may be required to provide photos to the permit administrator as the work progresses. If this is anticipated, this should be stipulated in the approval, along with types or views of photos and method of sending

41.23 E. FACILITIES AUTHORIZED BY THE RECREATION RESIDENCE PERMIT

- E.1. **Overall Management Guidelines:** The Forest shall manage these structures and tracts so that they continue to appear harmonious with nature and the surrounding scenery, do not visually dominate key viewsheds, such as along lakeshores, scenic byways, highways and trails and do not negatively impact the Forest resources. This goal is to manage for those qualities determined to be salient and important to the eligibility of recreation residences and tracts in the Northern Region to the NRHP, as described in the “Recreation Residences Historic Contexts for Eight National Forests in Region 1” and “Recreation Residences Historic Contexts for Eight National Forests in Region 1 – Custer National Forest, Montana” documents prepared by the Forest Service to address compliance with the NHPA.

Existing buildings, facilities or improvements (except for non-native landscaping which is addressed later in this section in F.8.e.) that do not conform to the directives described by this document or by service-wide directives but that were previously authorized by the Special Use Permit (pre-December 31, 2008) may be re-authorized by subsequent recreation residence special use permits. However, they should be required to be brought into conformance at such time that the building, facility or improvement:

- a. is destroyed;
- b. is substantially damaged (50% or greater);
- c. is sufficiently deteriorated to be no longer functional; or
- d. is proposed, by the holder, for replacement, major structural changes, reconstruction or significant remodel. Historic restoration of a structure that is eligible for the National Register of Historic Places would not be considered a significant remodel.

These currently authorized but non-conforming structures or improvements may be re-authorized to a new permit holder when ownership changes.

- E.2. **Colors and Materials :** If a holder proposes new construction or requests to modify the exterior colors or materials of their recreation residence, other structures or improvements, the following guidelines should be used only if a color or material change is not already precluded due to eligibility of the structure for the National Historic Register. **Holders must receive prior approval from the authorized officer before they make any changes to the exteriors of structures.**

- a. **Colors:** Colors should harmonize with the surrounding landscape. Earth tones and forest colors that blend in with the surrounding Forest environment and adjacent Residences are ideal. Dark browns, dark greens and dark grays are recommended. Bright colors such as shades of white, red, blue, yellow, orange, etc. shall not be

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approved unless there is historic precedence and significance. This also applies to trim and doors. It is recommended that all structures on a lot should have the same colors for the exterior walls and for the roofing.

- b. **Materials:** Non-reflective materials should be used. Materials that emphasize or appear similar to those from the natural environment should be used. Metal roofing or fire resistant shake look-alikes may be acceptable and should be encouraged. Recycled plastic lumber used for decking or other appropriate uses may be appropriate. Holders should be encouraged to consider materials with fire resistance ratings when replacing roofs. There are numerous on-line resources for alternative roofing materials with fire resistant properties appropriate for historic structures.

E.3. **Buildings: Main Residence** : The maximum footprint of roofed or enclosed space shall be 1500 square feet. Factors such as environmental, visual and historic resources were used to develop this standard. These same factors, along with others, shall be the basis for authorized officer to consider requests by a holder to increase the size of their existing residence where that residence is currently less than the maximum of 1500 square feet. The Authorized Officer may consider allowing a retrofit to an existing residence to exceed 1500 square feet in specific circumstances, such as for a health or safety problem where there is a need to add wheelchair access that cannot be safely accommodated within the existing 1500 square feet due to a factor such as compliance with the National Historic Preservation Act.

a. **Measuring the Square Footage of the Main Residence:**

1. **For adding to an existing residence:** Square footage will simply be measured around the exterior of an existing residence, and will include all of those portions of the residence that are either roofed or enclosed. This includes enclosed or screened in porches, but excludes decks. Standard overhangs up to 30" do not count toward the calculation of roofed space total square feet (see Diagram B).
2. **For a complete replacement of an existing residence:** All replacement residences shall be designed to work in harmony with the topography, the Forest environment, the neighboring residences and the site while minimizing visual dominance of the structures.
 - i. A total maximum height of 25 feet (as measured from the ground on the downhill side of the Residence to the top of the highest exterior roof peak) will be approved. For sloped sites, some excavation to meet this height maximum may be approved, depending upon the site (see Diagram A).
 - ii. Square footage will be measured on the proposed architectural drawings around the exterior siding and will include all those portions of the proposed Residence that are either roofed or enclosed. Standard overhangs up to 30" will not count toward the calculation of roofed space (see Diagram B).
 - iii. No basements, walkout or otherwise, will be approved unless there are extenuating circumstances and reviewed on a case-by-case basis. Only foundations of crawl-space height, necessary to accommodate standard utilities and frost depth requirements will be allowed.

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- iv. The roof pitches on the core living portion of the residence must be at least 5:12. This does not apply to the roof of an attached porch or patio that has no living space above it (see Diagram A).
- v. New residences that do not have a square footprint must be constructed such that the long side shall be no more than twice the length of the short side (see Diagram B).
- b. **Uncovered Decks Attached to the Main Residence:** Total deck space (deck space that is neither roofed over nor enclosed) shall not exceed 600 square feet. Standard overhangs, over the deck space, of up to 30” do not count as roofed over. Existing decks exceeding this shall be allowed to remain but must be reduced in size when replaced. New decks or deck expansions shall only be allowed for the ground floor and for a maximum height of 3 feet from the top of the finished deck floor to the ground, measured where the deck connects to the residence. If the space under the deck is used for storage, it must be fully enclosed with solid material or lattice backed by solid material (see Diagrams A and B).
- c. **New Outside Stairways:** New outside stairways will not be allowed to access a loft or upstairs area.
- d. **Hot Tubs and Saunas:** Installation of a hot tub or sauna requires specific approval from the Authorized Officer. Hot tubs and saunas *may* be approved if incorporated and constructed into a deck that is attached to the main residence, are not visible by neighbors or from public vantage points (screening approved by the Authorized Officer can be used to achieve this), *and* that do not cause negative environmental impacts. Approval by the authorized officer must specifically address the installation as well as the holder’s proposal for emptying hot tubs before winter. If chlorinated water is used, it must be disposed of properly.
- e. **Solar Panels:** May be approved if they can be constructed of a non-reflective color that is harmonious with the Forest setting and the residence, and if the glass portion does not direct reflections toward other residences or public use areas.
- f. **Satellite Dishes:** Holders may mount a small (18” or less in diameter) satellite dish on the main house without approval from the authorized officer, only if it requires no modification of the structure’s exterior. No free-standing dishes will be approved. Dishes must not be visible from public primary travelways.

E.4. **Buildings: Toilet Buildings**

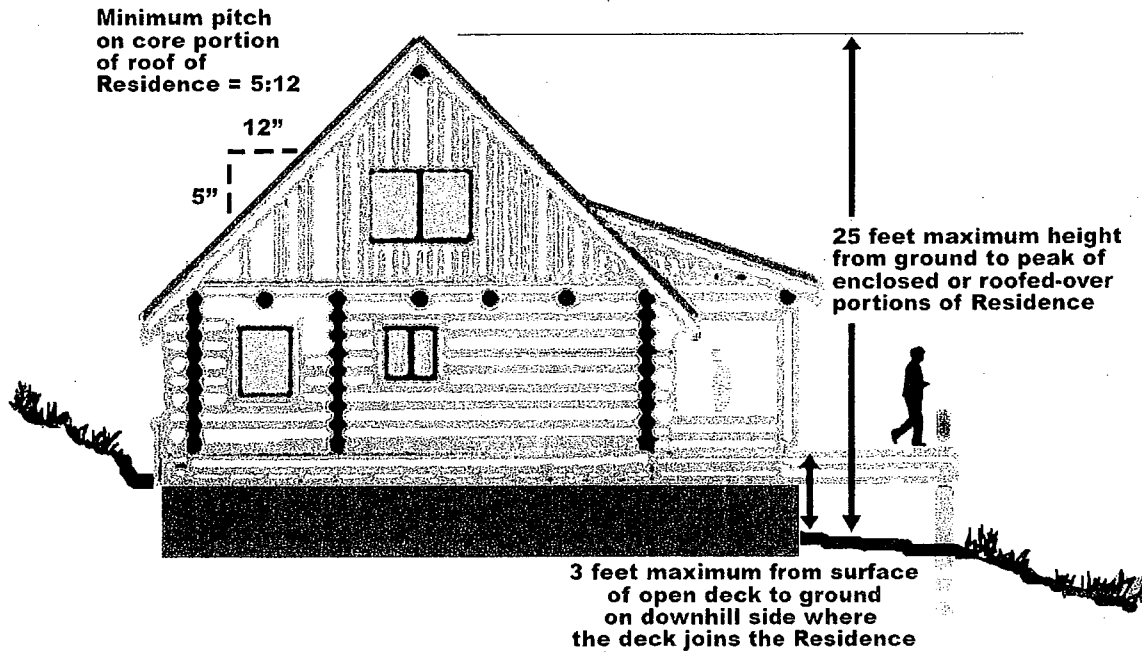
- a. Pit toilets no longer in use must be removed and the site cleaned up. Existing pit toilets that are functioning properly may be allowed to remain, however annual inspections shall include checks for signs of pollution or other problems.
- b. In general, according to county regulations, new pit or vault toilets at recreation residences will not be allowed, unless there are extenuating circumstances. County regulations generally require septic drain fields for recreation residences. Any new pit toilets, vault toilets, septic tanks, drain fields or cesspools must meet all applicable county codes. County permits are required prior to any excavation, and copies of the county permits shall be filed in the Forest Service permit folders.

- E.5. **Buildings: Garages:** No attached or detached garages will be authorized. A garage is defined as any structure designed for and/or capable of parking and/or storing a full-size motor vehicle. Existing garages will continue to be authorized, but may not be expanded. Reconstruction of detached garages will not be authorized.

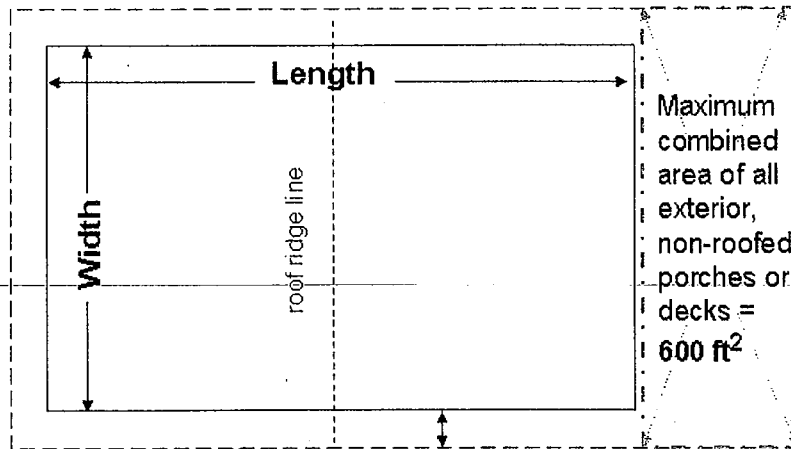
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**Diagram
 A**

**RECREATION RESIDENCE MAIN HOUSE
 dimension for replacement or modification**



**Diagram
 B**



**Roof
 Overhang**

- Length x Width = Footprint
- Maximum footprint of roofed or enclosed space = 1500 square feet
- Length cannot exceed 2 times the width
- 30" or less roof overhangs do not count towards 1500 sq. ft. footprint

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E.6. Outbuildings: Storage Sheds/Woodsheds:

District Rangers may consider requests to construct one outbuilding, if the special use permit currently includes no outbuildings. Where a lot already contains authorized outbuildings, the authorized officer should consider requests to construct an outbuilding if the holder agrees to consolidate those existing outbuildings into one new outbuilding.

- a. Maximum size for a new single outbuilding shall be 250 square feet, of roofed or enclosed space (see Diagram C).
- b. Roof overhangs up to 18" are not included in the roofed over square footage calculation (see Diagram C).
- c. Outbuildings shall not exceed 15 feet in height to the roof peak, measured from the ground on the downhill side (if the ground is sloped) to the top of the highest point (see Diagram C).
- d. The roof pitch shall be at least 5:12 or steeper (see Diagram C). Shed roofs may be less steep.
- e. New outbuildings shall not contain bathroom, cooking or sleeping facilities. Such facilities shall be removed from existing outbuildings when the building is renovated or replaced.
- f. The length of the building footprint cannot exceed two times the width (see Diagram C).

E.7. Guest Cabin / Sleeping Cabins: Authorized officers will not approve any new guest cabin, sleeping cabin or conversion of an existing outbuilding to include sleeping quarters. Replacement of existing guest or sleeping cabins will not be allowed.

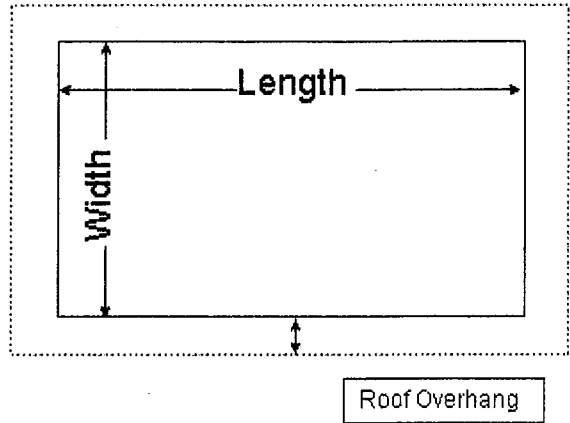
E.8. Other Constructed Features and Improvements

- a. **Water Systems:** Authorized systems that are functioning properly may be allowed to continue. Systems that use seasonal diversions from surface water sources are to be closed and redirected into the source drainage (i.e. diversion stopped) before freezing terminates seasonal use. No permanent landscape sprinkler systems shall be allowed.
- b. **Septic Systems:** Authorized systems that are functioning properly may be allowed to continue. When current systems stop functioning or fill up, holder must submit a proposal for a new system to the District Ranger that meets appropriate codes. If resource issues make the installation of a new septic drain field impossible, District Ranger may approve other sanitation methods, if consistent with County Environmental Codes.
 1. Septic drain fields may extend beyond the permitted lots if approved by the authorized officer.
- c. **Roads, Driveways, Parking Areas:** Roads, driveways and parking areas are improvements that must be authorized by a permit. Permit holders are responsible for the maintenance of driveways; major driveway maintenance must be approved by the Authorized Officer. If driveways only serve an individual lot, they should be listed on the face of the recreation residence permit. If they serve multiple lots, they may be authorized in a separate permit to an association. These improvements should be kept to the minimum space necessary. See the "Operation" section below for a brief discussion of maintenance, sedimentation and pollution. Forest System Roads within recreation residence tracts are designated for public motorized use.

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**Diagram
C**

Outbuildings and Sheds

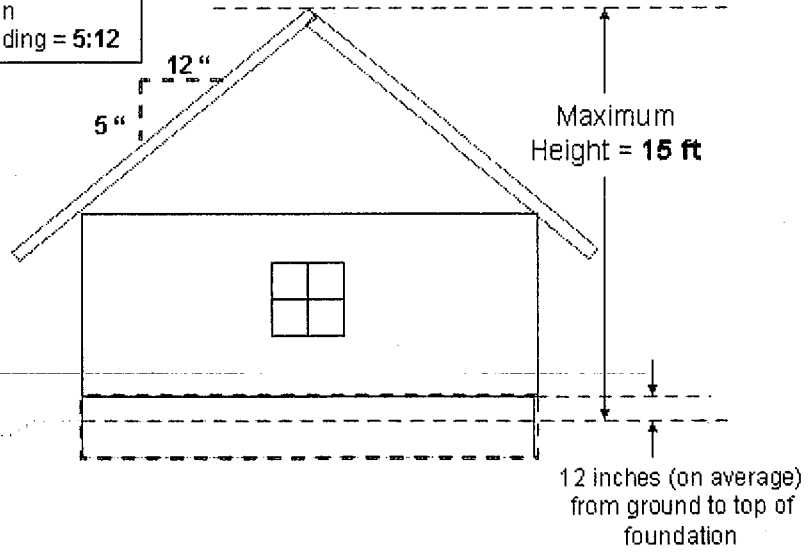


Length x Width = Footprint

Maximum Footprint = **250 square feet**

18" or less roof overhangs do not count towards total footprint.

Minimum roof pitch on outbuilding = **5:12**



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- d. **Landscaping:** New landscaping or any new land disturbance that includes plants, digging, grading, moving soil, pavers, concrete, etc. requires authorized officer approval. Only native species will be authorized. The goal for recreation residence lots is to have natural appearing, native landscapes. Where non- native, non-natural-appearing landscaping currently exists, the authorized officer shall work with holders to naturalize their landscape.
1. The authorized officer may approve requests from holders to transplant from appropriate off-lot NF areas to within the permitted lot, as long as holders are directed to specific areas, given specific guidelines, and the holes from where plants are taken are filled in and the areas naturalized. No additional permit would be needed since plants would be re-planted within the NF. Transplanting may be done to naturalize the lot, to enhance the aesthetics and ambience, to provide buffering or to address erosion or other issues.
 2. Existing non-native landscaping that was previously authorized by the Special Use Permit (pre-December 31, 2008) may be re-authorized by subsequent recreation residence special use permits. However, when ownership of the improvements changes hands outside the family, a condition should be included in the new permit stating “Holders must present to the Forest Service for approval, then implement, a 5-year plan to naturalize the landscape.”
 3. Small containers of non-native annuals, provided they are not noxious or prolific seeders, may be allowed next to the main residence.
- e. **Propane and Other Fuel Tanks:** Propane or any other fuel tanks shall not be buried.
- f. **Gates:** The authorized officer may allow gates where appropriate or necessary. Where authorized gates exist, holders must allow the Forest Service vehicular access to the permit area at all times.
- g. **Signs:** All signage (including temporary signs such as real estate) must be approved by the authorized officer prior to installation. Design of signs should be appropriate for the natural forest setting and should be as small as possible to still accomplish the intended purpose.
1. Holders must not install “No Trespassing” signs or other signs that prohibit public access, except on private buildings or structures.
 2. The authorized officer may approve the installation of a sign identifying recreation residences as authorized by a special use permit. (FOREST SERVICE sign #27-5, 10” x 7” metal, black on yellow).
 3. Each situation for a signage request should be evaluated on the need.
- h. **Constructed Barbeques, Fire Rings and Exterior Fire Places:** The authorized officer shall ensure fire safety and aesthetics of the forest setting in considering approval of fire rings. Constructed barbeques and exterior fire places will not be authorized. Fire rings will not exceed 48 inches in outside diameter.
- i. **Stock Facilities:** Stock use, boarding or facilities in association with recreation residence use is not allowed unless approved by the authorized officer.
- j. **Exterior Lighting**
1. Any new exterior lighting installations require approval. Approvals will be based upon needs to address safety concerns.

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2. Should not be attached to trees or present safety hazards.
3. Must point downward
4. Must be the minimum necessary to provide illumination but not project beyond the permitted lot or authorized off-lot structures.
5. Must be controlled by a switch and shall not be motion or light sensitive.
6. All lighting fixtures shall be appropriate for the natural forest setting. Decorative or holiday lights are not allowed.

k. Other Improvements

1. Portable yard furniture, such as folding chairs, shall be stored appropriately when the Residence is not occupied.
2. Tree Houses / Playhouses / "Forts": These will not be approved. Other children play structures, such as swings, need approval on an individual basis.
3. Detached decks: No new detached decks will be approved.
4. Patios: No new patios will be approved; existing patios will be permitted.

41.23 F. OPERATING STANDARDS

F.1. Operation and Maintenance Plan: Actions Not Needing Prior Approval

Actions that holders may take without needing prior approval from the Authorized Officer. Those actions are:

- a. Maintaining existing landscaping.
- b. Minor pruning of limbs of trees or bushes that intrude upon driveways, pathways or structures within the permitted area, including within 50 feet of lakes and 100 feet of streams.
- c. Upon Forest Service approval of a weed prevention and control plan supplied by the holder, the holder can use approved herbicides to control infestations of noxious weeds on the permitted lot. Herbicides used, treatment, and associated protective measures for other resource considerations must be consistent with the Record of Decision for the 2006 Custer National Forest Weed Management EIS (i.e., there are specific herbicide restrictions around surface and ground water, some herbicides may have more restrictions than that listed on the label, herbicide use around trees, etc.). This provides clarification to the standard Permit Clause V.E. and XI.E of the Permit. The **holder** has the responsibility to control infestations of noxious weeds on the permitted lot and around all authorized improvements and use areas.
 1. Holders must provide a report to the authorized officer annually for herbicide use on noxious weeds, stating 1) the product used; 2) the amount used; 3) name of person who did the application; 4) certification for product use (if any required) and 5) a rough map showing the location within the permitted area where the product was used.
- d. Minor use of insecticide, such as for spraying wasps or dusting an anthill.
- e. Cutting (without prior approval) dead dangerous hazard trees that are creating an emergency by imminently threatening to fall on and strike holders' authorized structures.
 1. After cutting a dead, dangerous tree, holders are responsible for reporting that to the authorized officer, who should add documentation to the permit file.

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2. Up to 2 cords of the wood from felled, dead hazard trees may be utilized by the holders for firewood on their permitted lots without needing to purchase a firewood permit. Holders are required to purchase a firewood permit to utilize the wood off their permitted areas.
3. Holders are responsible for piling the residual slash in an open area. Slash piles should be small enough to facilitate safe burning (approximately 4 feet in diameter).
4. Holders who wish to burn piles must first obtain approval from the authorized officer and between March 1 and November 30 county burn permits are required.
- f. Storing up to a maximum of 2 cords of firewood on a permitted lot at any time. Storing more than 2 cords requires prior authorization.
- g. Repainting / re-staining building exteriors with the same color.
- h. Pumping septic tanks, vaults or toilets.
- i. Mounting a small (18" or less in diameter) satellite dish on the main residence house, as long as that requires no modification of the structure's exterior.
- j. Doing interior building modifications, however outbuildings shall not be modified to include sleeping quarters or be converted to sleeping or guest cabins.
- k. Having a contractor perform maintenance services on the structures, however the holder is responsible for ensuring that their contractor meets the terms of the special use permit and all other applicable laws and regulations.
- l. Temporarily expanding the overnight capacity of the residence by using tents, teepees or recreational vehicles, except in areas with special restrictions. Temporary is defined as 16 days by the Forest stay limit special order.

41.23 G. CONSIDERATIONS

The following considerations shall be 1) addressed by the authorized officer when considering proposals and issuing approval for specific projects and 2) included in the O&M Plan where pertinent and appropriate for holders to consider during routine maintenance and daily normal activities.

G.1. **Threatened, Endangered, Sensitive, and Other Species.** If there are species of concern in or near permitted lots that may affect holders' activities, the authorized officer shall notify those holders of any specific restrictions. Prior to issuing approval for activities, the authorized officer shall consider the following:

- a. **Lynx:** The 2007 Northern Rockies Lynx Management Direction, and any subsequent lynx management direction, which may require:
 1. Thinning or vegetation removal to only occur if it is within 200 feet of dwellings and outbuildings. Any thinning or vegetation removal should be reported to the district biologist.
 2. Continuous, long term snowplowing or snowmobiling to access a recreation residence to only take place if: 1) the snow-compacting activity occurred in the same location during the baseline period of 1998 to 2000, or 2) such use would result in consolidation of snow-compacting activities. The location and intensity of snow-compacting activities that do not occur in the same location as they did during the baseline period 1998-2000 shall be monitored every five years.

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- b. **Bald Eagle:** The 2010 Montana Bald Eagle Management Guidelines: An Addendum to Montana Bald Eagle Management Plan (1994), and any subsequent bald eagle management direction, which may require:
 1. The authorized officer to avoid giving approval for projects that involve significant hammering, drilling, chain saw use or other loud construction noises or disturbances within ½ mile of an active bald eagle nest from February 1 through August 15.
 2. When responding to requests to approve projects that involve tree removal within permitted lots, approvals should include the retention of large trees for eagle feeding, perching and nesting.
- c. **Grizzly Bear:** The 1993 Grizzly Bear Recovery Plan, the 2006 Forest Plan Amendment for Grizzly Bear Habitat Conservation for the Greater Yellowstone Area National Forests, and any subsequent grizzly bear management direction, which may require:
 1. Inclusion of the current Food Storage Order and Grizzly Bear Management and Protection Plan in all Recreation Residence Special Use Permits or Operation and Management Plans.
- d. **Peregrine Falcon:** The 1986 Custer National Forest Management Plan and any subsequent Peregrine falcon management direction, which may require:
 1. The authorized officer shall avoid giving approval for projects that involve significant hammering, drilling or other loud construction noises or disturbances within ½ mile of an active or inactive peregrine falcon nest between February 1 and August 15.
- e. **Long-eared Myotis, Long-legged Myotis, Pallid Bat, Spotted Bat, and Townsend's Big-Eared Bat:** Forest Service Manual 2600 Chapter 2670 – Threatened, Endangered, and Sensitive Plants and Animals and any subsequent bat management direction, which may require:
 1. A survey for bat roosting and maternity sites if a building, bridge or snag is proposed for removal, destruction, or alteration.
- f. **Boreal Toad and Northern Leopard Frog:** Forest Service Manual 2600 Chapter 2670 – Threatened, Endangered, and Sensitive Plants and Animals and any subsequent bat management direction, which may require:
 1. Avoidance of destruction or disturbance to amphibian habitat, including the following requirements:
 - i. Vehicles shall not drive in riparian areas, wetlands, or below the high water mark of any waterway or water body.
 - ii. Forest or District biologist shall be consulted prior to slash pile burning.
 - iii. Forest or District biologist shall be consulted prior to any removal of down woody debris along lakeshores or within 100 feet of any stream, spring, seep or wetland.
- g. **Big Game, Predators, and General Wildlife:** Montana state laws and regulations; Forest Service policy.
 1. Do not allow feeding of any wildlife, including big game (Montana state law).
 2. Do not allow bears to access human food, pet food, garbage, or any other attractant as defined in the Food Storage Order – see section G.1.c. (Montana state law).

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3. Do not allow the planting of any non-native vegetation, especially fruit trees, which may attract big game animals and subsequently potentially attract predators.
4. Wildlife/ human conflicts in the vicinity of recreation residences, especially those involving a bear or other predator, shall be reported by holders to the Forest Service immediately, or as soon as possible after the incident.
5. Pets must be under control at all times so as to not harass, injure, or kill wildlife nor lead predators to the recreation residence areas.

h. **Sensitive Plants:** Ground disturbing activities require a sensitive plant assessment.

i. **Migratory Birds:**

1. The authorized officer should avoid approving projects that will involve loud noises and that are near breeding areas of migratory birds during breeding season. Breeding season varies by species, but typically are from approximately mid-May to late-July.

G.2. **Roads, Driveways, Parking Areas and Vehicle Bridges:**

- a. Routine, repeated snowplowing requires prior authorization. The Forest Service must receive the request in writing at least 30 days before the holder would like to start the plowing.

G.3. **Fire and Fire Risk Reduction:** Fuel reduction is very important, not only to protect structures owned by the permit holders and their neighbors on both private and NF land, but to protect the surrounding forest as well. It is the goal of the Forest Service to manage the recreation residences to balance the needs to reduce fuels and fire risk with the needs of wildlife, aesthetics, and other resource consideration.

- a. Due to the variability of each site and situation, the authorized officer will continue to actively and strongly encourage and advocate for holders to implement fuel reduction, but not apply and require one standard fuel reduction treatment to all lots as a term of permit compliance.
- b. The Forest Service's responsibility is wildland fire protection and suppression. The Forest Service does not have structural fire suppression responsibilities.
- c. The authorized officer should encourage the holders to understand and implement appropriate fire protection guidelines where. The Forest website can provide a link to the "Firewise" website (www.firewise.org). Requirements for individual lot treatments should be addressed and documented through annual Forest Service inspections.
 1. The "Firewise" approach for fuel reduction is one tool available but all of its components may not be completely applicable or appropriate for all recreation residence lots.
- d. Holders must receive written approval from the authorized officer prior to implementing any fuel reduction on the property. Holders must notify the Forest Service when slash piles are generated through hazard tree removal or approved fuel reduction projects so that pile burning can be coordinated.
 1. Slash piles should be as small and compact as possible (approximately 4 feet in diameter) and piled away from structures, power lines, water lines, and residual live trees to facilitate a safe burning area with minimal scorching to surrounding trees and vegetation.
 2. Holders must obtain approval from the authorized officer prior to burning any piles, and between May 1 and September 30, burn permits are also required.

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3. All stumps should be left no higher than approximately 2” tall.
 - e. In general, vegetation within 50 feet of lakes and 100 feet from streams or rivers shall not be removed, except for minor trimming, as previously mentioned (in the list of actions that do not need prior approval from the authorized officer).
 - f. Use of burn barrels or trash burning is not allowed.
 - g. Firewood should be stored well away from structures. Recommended distances are at least thirty feet from the main cabin and at least 10 feet from smaller structures, propane tanks, and wood piles.
 1. No more than 2 cords of firewood may be stored on a permitted lot at any one time, without approval.
 - h. Holders should ensure that propane and other fuel tanks and feeder lines are not leaking.
 - i. Holders should be advised that fireworks are prohibited on the lot or anywhere on the National Forest.
 - j. Approved spark arrestors are required on all chimney and stove outlets.
 - k. All campfire sites and constructed barbeque areas must be approved by the Authorized Officer and authorized by the permit. An area 3 feet wide should be cleared to mineral soil around grills, barbeque pits and fire rings. Portable grills may be used on decks or porches. Holders should be advised to keep a fire extinguisher or a bucket of water and a shovel on hand or have an outside faucet or hose. Holders should not leave fires, grills or barbeques unattended.
 - l. Where appropriate, fire hydrants, wildland fire pumps and hose boxes may be installed with prior approval from the authorized officer.
 - m. Authorized Officers shall try to ensure that the permit administrator or their representative is involved as communication strategies are developed to inform holders of Forest closures due to fire or any other emergencies.
 - n. The authorized officer shall inform holders that they must abide by all applicable Forest closures.
- G.4. **Prevention of Water Pollution and Sedimentation:** During annual inspections, the permit administrator should check to see if there is direct discharge of overland flow from developed areas into adjacent water bodies. If overland flow transports road sediment, ash, or other human derived substances, corrective actions should be undertaken. Holders shall be advised that they need to remove potential pollutant source and/or increase the filtration ability of the land adjacent to the water body. This may refer to areas where vehicles drive or often park on ground that is so compacted there is little or no surface vegetation and where the ground slopes towards the water body. Generally this applies to areas within 50 feet from lakes and 100 feet from streams and rivers. Examples of mitigative actions might include: planting vegetation, mulching, or possibly changing use patterns through fencing, moving pollution sources away from the water edge or sedimentation control structures.