



United States  
Department of  
Agriculture

Forest  
Service

R3 Regional Office

333 Broadway SE  
Albuquerque, NM 87102  
FAX (505) 842-3800  
V/TTY (505) 842-3292

File Code: 1570-1/2700

Date: February 17, 2004

D. Diego Zamora  
Attorney at Law  
444 Galisteo St., Suite E  
Santa Fe, NM 87501

**CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED  
NUMBER: 7099 3220 0000 8708 4784**

RE: Appeal #04-03-00-0002-A251, H&A Outfitters, Santa Fe National Forest

Dear Mr. Zamora:

This letter constitutes my review and decision on the appeal you filed on behalf of H&A Outfitters (Andrew Salgado) regarding the denial of his application for a Special Use Permit for outfitting and guiding on the Santa Fe National Forest.

My review was conducted according to the provisions of the appeal regulations in 36 CFR 251 Subpart C. I have considered the appeal record, federal statutes, policies and operational procedures set out in the directives system of the USDA Forest Service. The appeal points presented in your appeal, dated October 14, 2002, and the additional information which Mr. Salgado submitted as part of the oral presentation held in this office on December 18, 2003, were reviewed as well as the original Letter of Denial, dated August 29, 2003, and the Forest Supervisor's Responsive Statement to your appeal, dated November 14, 2003.

### **BACKGROUND**

According to the "State of New Mexico Incident Report", filed by Officer Edward J. Smith, the following incident occurred on December 2, 2001. Mr. Salgado was involved in a disagreement with a Mr. Sisneros which resulted with Mr. Salgado then being charged with four offenses – aggravated assault with a deadly weapon (automobile); aggravated assault with a deadly weapon (axe); criminal damage to property; and reckless driving. The disagreement stemmed from a dispute over "dog box" ownership and/or payment for that box. Preceding the conflict, Mr. Salgado saw Mr. Sisneros and another occupant drive past the restaurant he was in. Mr. Salgado then caught up with Mr. Sisneros's vehicle and "ran him off the road". Because Mr. Sisneros refused to roll down the window and talk with Mr. Salgado, Mr. Salgado then grabbed an axe from the back of Mr. Sisneros's vehicle and struck the driver's side window. Mr. Salgado then told Mr. Sisneros to return his belongings. Mr. Salgado then left. Mr. Sisneros sustained several small cuts to the left side of his face and nose from the broken glass. Officer Smith (NM Highway Patrol) investigated the incident and interviewed Mr. Sisneros. Mr. Salgado returned during this time and Officer Smith also interviewed him.

On April 29, 2003, Mr. Salgado pled guilty to two offenses of misdemeanor aggravated battery in the State District Court, Rio Arriba County, New Mexico. The two other counts were dismissed as a result of the plea from Mr. Salgado.



On May 8, 2003, Mr. Salgado's Application for An Outfitter/Guide Special Use Permit was received by the Coyote Ranger District. Further processing of that specific application was deferred until the final outcome of Mr. Salgado's plea and sentencing had been determined.

The "Judgment, Sentence and Order Suspending the Sentence" was delivered on June 5, 2003 and set forth the terms and conditions of the plea agreement. These include: probation for one year, obeying all rules regulations and order of the Probation Authorities, obeying all federal, state and local laws or ordinances, payment of a \$15 monthly probation fee, the defendant report to Adult Probation and Parole by 5 P.m. on April 28, 2003, the defendant complete any treatment recommended by Adult Probation and Parole and that the defendant pay a fine of \$100.00 to the court.

Based upon the final outcome of the plea, Forest Supervisor Gilbert Zepeda formally notified Mr. Salgado on August 29, 2003, of his decision to deny his application for outfitting and guiding activities on the Santa Fe National Forest. The basis for this denial was based on the results of the plea and the judgment and sentence of the court. The denial of the application was for non-compliance with the Terms and Conditions of the outfitter/guide permit.

On October 14, 2003, Mr. Zamora, representing Mr. Salgado, filed an Appeal of this decision, under the 36 CRF 251, Subpart C regulations, with the Regional Forester and requested an oral presentation.

On November 14, 2003, the Responsive Statement was received in this office from the Forest Supervisor, Santa Fe National Forest.

On December 18, 2003, the oral presentation for Mr. Salgado was presented in this office. Attendees were Mr. Salgado, Mrs. Salgado, Mr. Zamora, John Boretsky, Lucia Tuner, Cassandra Casaus Currie (Attorney with the Office of the General Counsel), and John Beckley.

On January 13, 2004, Mr. Zamora hand-delivered all of the additional information that Mr. Salgado wished to have included as part of the official appeal record. The record was then closed on January 14, 2004.

### **DISCUSSION OF THE FINDINGS RELATED TO THE APPEAL POINTS**

I have reviewed the appeal record and my review decision incorporates the appeal record. The appeal contentions with my responses and findings are attached. I note that in a letter dated August 29, 2003 (which was the notification of decision to deny) the Forest Supervisor stated that he would consider a proposal for an Outfitter/Guide permit from Mr. Salgado based upon his providing the evidence of completion of the obligations under the sentencing guidelines.

### **APPEAL DECISION**

After a detailed review of the record, I affirm Forest Supervisor Zepeda's decision to deny Mr. Salgado's proposal for a Special Use Permit for outfitting and guiding on the Santa Fe National Forest.

**STATEMENT OF APPEAL RIGHTS**

This appeal decision is subject to discretionary review by the Chief of the Forest Service. This appeal review decision will be forwarded to the Chief within one day following the date of the decision. Upon receipt, the Chief will have 15 calendar days to decide whether or not to exercise discretionary review. (36 CFR 251.100(b) and (c)).

Sincerely,

/s/ Lucia M. Turner  
LUCIA M. TURNER  
Appeal Reviewing Officer, Deputy Regional Forester

cc: Forest Supervisor, Santa Fe National Forest, Christina Gonzalez, John Beckley, Michael Frazier

**REVIEW AND FINDINGS**

of

**H&A Outfitters**

**Appeal #03-03-00-0037-A251**

**Denial of application for a Special Use Permit for  
Outfitting and Guiding  
on the Santa Fe National Forest.**

**ISSUE 1:** Mr. Salgado is appealing Forest Supervisor Zepeda's decision which was dated August 29, 2003, and which denied Mr. Salado's application for an outfitter/guide permit on the Santa Fe National Forest.

**Contention:** The appellant contends that the Forest Service improperly denied the application for an outfitter guide permit based upon the appellant's guilty plea for aggravated battery in State District Court, Rio Arriba County.

**Response:** The record clearly reflects the incident in which the appellant was involved. The forest, in fact, did not take any action on the proposal until after the plea was entered and sentencing was completed. The regulations at 36 CFR 251.54 (Proposal and application requirements and procedures) clearly states that the proposal shall be screened to meet the nine minimum requirements applicable to all special uses, with the third requirement being: "The proposed use will not pose a serious or substantial risk".

Forest Service Handbook 2709.11, Chapter 10, 12.21 (Criteria for Initial Screening) also states:

*"to receive further consideration at the second-level screening, proposals must meet all nine initial screening criteria requirements that the proposed use:*

*(item 3) Will not create a serious and substantial risk to public health or safety. State and local officials can provide input with respect to public health and safety concerns affecting the proponent's operations and other forest resources and activities."*

The Authorized Officer has the responsibility to utilize the screening process to determine the feasibility of a proposal. If the Authorized Officer determines that the proposal fails any of the initial nine screening criteria, the Authorized Officer must return the proposal and notify the proponent in the appropriate manner.

**Finding:** The denial of the proposal was proper and consistent with the direction in 36 CFR 251, Subpart C and with Forest Service Handbook 2709.11, Chapter 10, 12.21 (Criteria for Initial Screening).

**ISSUE 1a:** The Forest Service improperly notified other national forests in New Mexico and suggested Mr. Salgado's permit be denied on those other forests.

**Contention:** The appellant contends that the Forest Service improperly notified other national forests in New Mexico, specifically the Cibola and Gila National Forests, of the denial of the appellant's application and suggested that they also deny the appellant's permit based upon his conduct and plea.

**Response:** The record reflects that Mike Frazier of the Santa Fe National Forest did directly contact (through e-mail) the Gila National Forest. The basis of the e-mail was to gather additional information which may pertain directly to the Santa Fe's situation with the appellant. This type of information gathering is common in order to determine if other forests are encountering a similar problem with the proponent.

The e-mail from the Santa Fe National Forest to the Gila National Forest, in part, states, "He (appellant) represents that he's got a priority use permit on your Forest and that he doesn't have any problems with you guys. I'm checking his story out—do you know his reputation with permit administrators on your Forest?"

The reply from the Gila National Forest (Quemado Ranger District) states in part, "He (appellant) is always prompt and accurate in detail. I checked back and find nothing negative in his file".

**Finding:** There is nothing in the record to indicate that the Santa Fe National Forest suggested that other forests deny the appellant's permits on those forests.

**ISSUE 1b:** The appellant was told that a guilty plea on his part would not affect his permit status.

**Contention:** The appellant contends that he was told by Mike Frazier of the Santa Fe National Forest and Mr. John Boretsky (Executive Director, New Mexico Council of Outfitters and Guides) that a guilty plea to a misdemeanor would not affect his permit status.

**Response:** The record shows that the only discussion appropriate to this contention was a conversation between Mr. Frazier and Mr. Boretsky in which Mr. Boretsky related that he had given advice to the appellant but the focus of that advice was related to the appellant's state outfitter license, not his Forest Service outfitter/guide permit.

**Finding:** There is nothing in the record to indicate that Mr. Frazier had a conversation with the appellant pertaining to his plea agreement.

**ISSUE 2:** The Forest Service issued an outfitter guide permit to Vicky Salgado (Double AA Outfitters) while not reissuing a permit to the appellant.

**Contention:** The appellant contends that there is an inconsistency because the Forest Service issued an outfitter/guide permit to Vicky Salgado (Double AA Outfitters) and the appellant

guides for her. This is inconsistent with the perception that the appellant was a threat to the community, his clients and his employees.

**Response:** The Responsive Statement from Forest Supervisor Gilbert Zepeda shows that there was consideration regarding prohibiting the appellant from working as a guide for his wife, Mrs. Salgado (Double AA Outfitters) but that consideration was dismissed.

In the screening process, the evaluation of the proposal/application is based on the financial and technical abilities of the proponent/applicant. This would concentrate the evaluation on Mrs. Salgado and she was evidently found to be financially and technically capable because an outfitter/guide permit was issued to her company. The responsibility, and ultimately the continued renewal of the permit, is the sole responsibility of only the holder, not the individuals employed by the holder. During the annual Operating Plan meeting between the Authorized Officer and the holder, the Authorized Officer has the discretion and latitude to question the integrity and ability of those employees retained by the holder, including any history of any past problems those employees may have had. The Authorized Officer then has the authority to approve or to not approve any employee that does not meet the minimum requirements as reflected in the permit and the Operating Plan.

**Finding:** There was no inconsistency in permitting Mrs. Salgado while she was utilizing the appellant as a guide.