

AUTHORITY FOR CONCESSIONS PLANNING

A. LAW

1. National Park Service Establishment Act, August 25, 1916;
39 Stat. 535; 16 U.S.C. 1 (Sec. 2 omitted)

SEC. 1. ***The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.

SEC. 3. *** (The Secretary of the Interior) may also grant privileges, leases, and permits for the use of land for the accommodation of visitors in the various parks, monuments, or other reservations herein provided for, but for periods not exceeding thirty years; and no natural curiosities, wonders, or objects of interest shall be leased, rented or granted to anyone on such terms as to interfere with free access to them by the public***

2. Concessions Policy Act, P.L. 89-249, October 9, 1965;
79 Stat. 969; 16 U.S.C. 20 et seq.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in futherance of the Act of August 25, 1916 (30 Stat. 535), as amended (16 U.S.C. 1), which directs the Secretary of the Interior to administer national park system areas in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the

least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

3. National Environmental Policy Act of 1969 (NEPA), January 1, 1970; 42 Stat. 4321 et seq.

See NPS-12, Environmental Assessments and Statements.

4. Economic Recovery Tax Act of 1981 (ERTA), P.L. 97-34 August 13, 1981

Repeals earlier authorized preservation tax incentives and replaces them with a 25 percent investment tax credit and other provisions which provide incentives to encourage the preservation and reuse of historic buildings.

5. National Parks and Recreation Act of 1978

Requires the preparation and timely revision of general management plans for each unit of the National Park System.

6. National Historic Preservation Act of 1966, as amended

Section 106 requires consultation with the Advisory Council on Historic Preservation before any undertaking that would have an effect on a National Register property.

See NPS-28, Cultural Resources Management. Also, Section 111 allows any federal agency to lease or exchange a National Register property.

7. Archeological Resources Protection Act of 1979

Provides for the protection of archeological resources located on public lands.

See also NPS-28, Cultural Resources Management.

8. Specific Park Enabling Legislation

The enabling legislation for a park should be consulted as a part of any park planning effort.

9. Other Laws

The Denver Service Center (DSC) Legislative Compliance Check List may be consulted for other laws concerning cultural resources; land, air, and water; wildlife; transportation; and other laws which may affect concessions planning.

B. REGULATIONS, EXECUTIVE ORDERS, PROCEDURES

1. 36 CFR Part 51 - Concession Contracts and Permits

51.2 Policy

It is the policy of the Secretary, as mandated by law, to permit concessions in park areas only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair park values and resources. Concession activities in park areas shall be limited to those that are necessary and appropriate for public use and enjoyment of the park areas in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the park areas.

2. Executive Order 11988: Flood Plain Management
Executive Order 11990: Protection of Wetlands
and,
Final NPS Procedures for Implementing EO 11988 and 11990
45 Fed. Reg. 35916ff

The objectives of the above orders and procedures are to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of flood plains and wetlands whenever there is a practicable alternative. Where flood plains or wetlands cannot be avoided, the procedures will focus on mitigation of the adverse effects of any action.

3. CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA)

40 CFR 1500 - 1508; 43 Fed. Reg. 55978 - 56007

4. DOI Regulations Implementing NEPA

516 DM 1 et. seq.

5. National Park Service Implementing Procedures for NEPA

516 DM 6, Appendix 7; 46 Fed. Reg. 1042

6. Executive Order 12003: Energy Policy and Conservation

Provides for preparation of energy conservation plans and goals for federal buildings, including government-owned buildings assigned to concessioners and "certain concession-owned" buildings.

7. Historic Preservation Tax Incentive Program

36 CFR Part 67 - (National Park Service) Historic Preservation Certifications; Final Rule

Historic preservation certifications pursuant to the Tax Reform Act of 1976; the Revenue Act of 1978; the Tax Treatment Extension Act of 1980; and the Economic Recovery Tax Act of 1981.

26 CFR Parts 1 and 7 (Internal Revenue Service); Final Rule

Income Tax; Amortization of certain rehabilitation costs for certified historic structures.

26 CFR Part 1 (Internal Revenue Service); Proposed Rule

Ten percent investment tax credit for qualified rehabilitated buildings.

26 CFR Parts 1, 20, and 25 (Internal Revenue Service); Proposed Rule

Proposed regulations relating to contributions of partial interests in property for conservation purposes (easements).

8. Leases and Exchanges of Historic Property

36 CFR Part 18

Regulations to be used in offering National Park Service (NPS) historic property for lease.

Also see Special Directive 82-12 "Policy on Historic Property Leases and Exchanges" and NPS-38, "Historic Property Leasing Guideline".

9. Accessible Design Guidelines

36 CFR Part 1190

See Chapter 16 for additional information on accessibility guidelines and requirements.

10. Protection of Historic and Cultural Properties
36 CFR Part 800

Regulations published by the Advisory Council on Historic Preservation to implement section 106 of the National Historic Preservation Act.

11. Secretary of the Interior's Standards for Historic Preservation Projects

36 CFR Part 68

12. Other Regulations, etc.

Other regulations affecting specific concessions activities will be cited elsewhere in the Concessions Guideline. Other regulations affecting NPS programs are listed in the Denver Service Center Legislative Compliance Check List.

C. POLICIES

1. Management Policies Manual

a. COOPERATIVE REGIONAL PLANNING, Chapter II

...Informal cooperative planning and occasionally formal coordinated planning may be needed in many areas, including but not limited to:

-the provision of facilities and services for visitors within and outside the park, including those provided by National Park Service concessioners;

b. VISITOR FACILITIES, Chapter III

The Service will provide needed visitor facilities for the use and enjoyment of the park as identified in the general management plan and associated planning documents, commensurate with park purpose, objectives, the requirements of applicable laws, and Service policy.

OVERNIGHT ACCOMMODATIONS

The location and use of many parks is such that visitors need overnight accommodations in or near the park in order to enjoy their visit. Certain park uses, such as backcountry use, may require overnight stays. Overnight facilities will

be restricted to the kinds and minimum levels necessary to achieve each park's purpose consistent with the protection of park resources, and will be provided only when the private sector or other public agencies cannot adequately provide for them in the park vicinity. Overnight accommodations may vary from unimproved backcountry campsites to more substantial lodging, as appropriate.

c. COMMERCIAL SERVICES (Within Wilderness Areas), Chapter VI

Guide services for horseback trips, hiking, mountain climbing, boat trips and similar services designed to provide opportunities for the enjoyment of primitive and unconfined types of recreation or other wilderness purposes of the area are permissible under careful control by each park as to their nature, number and extent. Structures or facilities in support of such commercial services are not permitted within wilderness.

d. BACKCOUNTRY COMMERCIAL SERVICES, Chapter VII

Commercial touring use of the backcountry will be authorized as any other concession service--on the basis of need following appropriate planning and assessment of the impact on the environment.

e. PRIVATE ENTERPRISE OUT-OF-PARK, Chapter VIII

In considering the need for concession facilities in newly established parks or for the expansion of such facilities in existing areas, the Service is guided by the following policy.

If adequate facilities exist or can feasibly be developed by private enterprise to serve the park visitors' needs for commercial services outside of park boundaries, such facilities shall not be expanded or developed within park areas. The Service shall cooperate with State and local governments to develop the recreational region around major parks in a manner designed to meet the visitors' needs without degradation of the non-park environment or loss of quality of the visitor experience through uncontrolled and unregulated growth.

f. LOCATION AND CONTROL OF CONCESSIONS, Chapter VIII

In granting the privilege of a concession contract, any building program contained in the contract must be in concert with the appropriate approved plan for the area in consideration. It should be determined that:

- the use of the facility or service will enhance the use and enjoyment of the park without substantially resulting in impairment of park values;
- the facility or service is located where the least damage to park values will occur; and
- the facility or service is situated upon the smallest parcel of land practicable consistent with proper spacing and the preservation of aesthetic values.

(See Park Development Laws II-4, Design Quality and Control III-5, Overnight Accommodations III-8, Construction III-6, Utilities III-7, Wilderness-Commercial Services VI-5, Wilderness-Chalets and Concessioner Camps VI-9, Backcountry Commercial Services VII-12)

g. CONCESSION FACILITIES, Chapter VIII

The number of sites and the locations and sizes of the tracts of land assigned for necessary accommodations, as determined through the Service planning process, shall be held to the minimum essential for proper and satisfactory operation of the accommodations, consistent with proper spacing and preservation of aesthetic values. Moreover, such developments as are permitted shall be constructed so as to be as harmonious as possible with their surroundings.

All concession development shall be subject to compliance with the Procedures for the Protection of Historic and Cultural Properties promulgated by the Advisory Council on Historic Preservation.

D. RESPONSIBILITIES/ROLE AND FUNCTION

1. Washington Office (WASO)

The Concessions Division, WASO, provides policy and procedural guidance in the area of concessions planning and technical studies. Direction is given to the Denver Service Center Concessions Branch in terms of project priorities and review. Certain projects which are multi-regional in nature or

have nationwide implications will be the responsibility of the WASO Concessions Division, with the project to be conducted through use of the DSC Concessions Branch, a special task force, or contracted to outside sources.

2. Denver Service Center

The DSC Concessions Branch provides technical assistance and guidance in the areas of park planning, feasibility studies, economic analysis, market studies, facility design review, and operational review of concessions programs. The Branch has three sets of National Park Service "clients": DSC planning teams, regional offices/parks, and the Washington Office. Work is performed by the Branch, or as part of an interdisciplinary effort with other DSC, WASO, regional, and park personnel. The Branch may also serve as a contracting officer's representative for studies to be prepared by outside sources.

Procedures to follow in requesting assistance from the Branch can be found in Chapter 3, paragraph I.1.

3. Regional Offices

The regional role in concessions planning will vary according to the size and staff capability of the affected park area and according to the policies of each regional director. As a general rule, the regional staff serves also as staff to superintendents of smaller parks, but serves more in an overview role for larger parks. Planning requests may originate in either the park or the region, but in either event will be subject to definition and refinement by the regional office. The regional staff may prepare concessions plans or may secure assistance from DSC or outside consultants. A key regional role is to assist the superintendent in looking ahead in order to foresee early the need for future concession plans and to develop appropriate planning/contracting schedules.

4. Park

The superintendent is responsible for foreseeing the need for future concession plans and for taking the appropriate steps to assure their accomplishment. The superintendent or park staff will participate in the planning process, either as team members or as resource persons.

5. Approval Authority

If the plan is part of a DCP or GMP, the approval of the overall plan includes approval of its concessions component, and authorities are as set forth in NPS-2. Approval authority for a concessions plan which supports a contract or permit action is the same as the approval authority for the contract/permit itself (see Chapter 5 paragraph D). Other types of concessions plans will be approved by the original tasking authority.