**Draft Compliance Management Strategy**
**GGNRA dog management plan/EIS**
**9.23.10**

Background:

The compliance management strategy has been designed to ensure that compliance with the Code of Federal Regulations (CFR) applicable to dog management is high. It will provide the framework for monitoring and recording observed CFR violations applicable to dog management, including the new 36 CFR Part 7 special regulation, and will guide use of park resources to address those violations. Noncompliance with federal regulations related to dog management will be met with a series of management responses.

Timeline:

Monitoring will begin with plan implementation, or soon thereafter. A detailed monitoring plan will be developed to guide compliance monitoring, data management, and reporting. All sites in the dog management plan will be monitored. Beginning with initiation of the dog management plan, months 1-3 will be a public education period, and months 3-6 will test the monitoring strategy. A baseline of numbers and rates of visitors with dogs, type of use (on-leash or voice-control), and violations (not citations) will be established during months 6-18. After this baseline has been established, monitoring efforts may be prioritized and limited to specific areas based on noncompliance and use levels. All areas with demonstrated noncompliance with the regulations will be the focus of park management responses, as described in the primary management response section below. Monitoring also will inform park management and law enforcement when, where, and how to prioritize responses to noncompliance. If the rolling 12 month average for compliance falls below 75%, park management actions as described in the secondary management response will be implemented. The initial 12 month rolling average is based on data collected during months 6-18 after plan initiation.

"Baseline"? Do this source is background?

Monitoring will continue in all areas for at least 4 years, although the park may reduce the frequency of monitoring in low use or high compliance areas to focus on areas with high use or low compliance as needed. Regular monitoring of an area over a 12 month period is required before secondary management responses can be implemented, however, the frequency of monitoring may vary over time.

challenges?

NPS will prepare annual reports documenting monitoring data collected and any consequent management actions. NPS will release a preliminary report providing baseline data after the first 6 months of monitoring (month 12 after plan initiation)..

Standard: Compliance with federal regulations applicable to dog management.

Indicators: Noncompliance with federal regulations applicable to dog management (see chart below).

Disorderly/aggressive

| Vegetation Damage | Wildlife Disturbance | Disturbance to T&E Species | Violation of Areas Closed to Dogs (T/E and Sensitive Habitat) | Violation of Areas Closed to All (T/E and Sensitive Habitat) | Pet Excrement (grid or observations for noncompliance) | Hazardous Condition (aggressive behavior, pet rescues) | Degree of Compliance with special regulation (no dogs, on-leash, ROLA) | Gov't Property Damage | Violation of Areas Closed to Dogs (Safety) |
|---|---|---|---|---|---|---|---|---|---|
| 36 CFR 2.1 (a) (1) (ii) | 36 CFR 2.2(a)(2) | 36 CFR 2.2 (a) (2), 50 CFR Part 17 | NEW PART 7 SPECIAL REGULATION | 36 CFR 1.5 (f) | 36 CFR 2.15 (a) (5) | 36 CFR 2.34 (a) | NEW 36 CFR PART 7 SPECIAL REGULATION | 36 CFR 2.31 (a) (3) | 36 CFR 1.5 (f), NEW PART 7 SPECIAL REGULATION |

**Comment [MBE1]:** Assumes the plan has a Biological Opinion. If not, remove.

Triggers and management responses:

1. Primary management response: When noncompliance is observed at an area, NPS would weigh appropriate management actions and would respond from a suite of potential management actions that include: focused enforcement of regulations, education (e.g., additional information and regulatory signs and exhibits, brochures and fliers, public meetings, meetings with user groups, etc.), establishment of buffer zones to protect sensitive habitat and species, time/use restrictions, and SUP restrictions.
   a. Areas with the highest rates of noncompliance, and/or sensitive resources, will receive first priority for primary management responses.
   b. Aggressive dogs or unsafe behavior (e.g. resulting in cliff rescues) are treated on an individual, case-by-case basis, and may result in banning a particular dog or dog walker from the park.
   c. Management responses related to threatened and endangered species will be governed by the Terms and Conditions described in the Biological Opinion pursuant to the Endangered Species Act, and are separate from the compliance based strategy.

**Comment [WWM2]:** How will this be done ?

MBE response: Not sure about the dogwalker part. Seems like people only get banned for egregious violations – would this qualify? If it does, don't know that we need to go into detail on how that would happen here. BARBARA?

2. Secondary management response: When compliance falls below 75% in a site (measured as the percentage of total dogs violating the regulations) over a yearly rolling average (measured by the previous 12 months' data), the area flips to the next more restrictive level of dog management, for example: ROLA to on-leash, or on-leash to no dogs. The secondary management response would not be implemented until after the first 18 months, during which the monitoring plan will be tested and baseline data collection begun. If monitoring shows that a simple majority of violations (more than 51%) are occurring in one particular area within a site, such as a ROLA, only that area would flip, not the entire site. If noncompliance is widespread – not focused in one area only, the entire site would flip to the next most restrictive level.

**Comment [WWM3]:** How do we deal with noncompliance at no dog areas? Esp. if can't tie it to adjacent ROLA or on-leash area? Ocean Beach?

MBE response: I believe this would be addressed primarily by law enforcement and education.

(1-way flip) Why wouldn't we do this?

Can it flip to less restrictive if compliance goes well? Why not?

How do we verify our monitoring if challenged

FAQ's:

a. How do law enforcement citations or other violations factor into the plan? While violations will likely occur that are not documented by the monitoring team, including those resulting in law enforcement citations, these do not count towards the cumulative total, because these violations would not be measured against the total number of dogs in an area. However, violations, including citations, may be used to inform the monitoring team where to focus its efforts.

b. How will the monitoring strategy be developed to produce an unbiased estimate of percent compliance? A probability based survey would be required to produce an unbiased estimate of the percent compliance with a specified margin of error. The survey would include a randomized selection process for selecting visitors with dogs to survey, and a method for conducting the survey. The survey plan would also address the various potential biases, such as selection bias, spatial coverage bias, and non-response bias. A stratified sampling procedure may also be employed to weight survey effort to more highly trafficked areas.

c. What are some examples of the compliance-based strategy in practice at different periods in time?

   i. Month 15 of the plan: The monitoring team visits a specific site at random times of the day and week. The team will count the total number of dogs and types of use over a pre-set monitoring period, while also recordingthe number of violations. This information will be compiled with the preceding months' monitoring data to develop a cumulative total number of dogs and violations. In 3 more months the monitoring team will have 12 months of data to evaluate, to determine if a secondary management response is warranted.

   ii. Month 18 of the plan: The monitoring team has continued to visit this specific site at random times of the day and week, following the same monitoring protocols as noted above If compliance falls below 75% based on the previous 12 months' monitoring data, the area management will change to the next most restrictive dog management guideline.

d. Rationale for 75%:

   i. The dog management plan/EIS and the resulting special regulation, along with existing regulations applicable to dog management, determine appropriate behavior for visitors with dogs within Golden Gate National Recreation Area. NPS does not condone any level of noncompliance, and the primary management response detailed above is sufficient to address noncompliance where it is not widespread. The secondary management response is meant to apply when it is clear both that park management has been unable to reduce noncompliance through conventional means, and when there is continued and widespread noncompliance occurring over a longer period of time. It provides visitors with dogs an additional incentive to comply with the dog regulations,

**Comment [MBE4]:** This section developed with the help of a statistician at EA. Please review.

**Comment [WWM5]:** We also said we would likely record numbers of people and numbers of dogs per person.

MBE response: Yes, I don't think this is an exhaustive list of what will be counted.

and because it is specific to an individual area, it encourages a communal response to address noncompliance. It places a burden on NPS to take an initial, proactive approach to dog management by addressing individual violators and by increasing public awareness through community education and outreach, and not punish the majority for individual or isolated violations. At the same time, this secondary response recognizes that NPS has multiple competing priorities to address with its funding and does not have unlimited resources with which to ensure compliance with dog regulations. Compliance less than 75% would not be sustainable for park operations, and could only be addressed through increased restrictions.

e. Rationale for 18 month period before a secondary management response could initially be applied:
    i. Need 3 months to educate the public about the plan, and 3 months to begin implementation of the monitoring plan.
    ii. Need one year to implement the full range of possible management actions addressing noncompliance as outlined in the primary management response, as well as to have 12 months of monitoring data.
    iii. One year rolling average is measured at the end of each month; action could be taken after any month as long as there are 11 consecutive preceding months of data.

**Adaptive Management**

| Issues and Impact Topics | Mori Point | Milagra Ridge | Sweeny Ridge/Cattle Hill | Pedro Point Headlands | Stinson Parking Lots/Picnic Areas | Homestead Valley | Fort Baker | Alta Ave. Fire Road | Oakwood Valley | Muir Beach | Marin Trails | Baker Beach | Fort Miley | Crissy Field | Ocean Beach North of Stairwell #21/South of Sloat Blvd. | Fort Funston | Tennessee Valley | Rodeo Lagoon | Rodeo Beach | Fort Mason Parade Grounds |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | **Locations** | | | | | | | | | | | | | | | | | | |
| **1. Vegetation - trampling and disturbance** | | X | X - both sites | X | | | X | | X | | X | X | | | | X | | | | |
| **2. Species of Concern (T&E Species):** | | | | | | | | | | | | | | | | | | | | |
| Western Snowy Plover | | | | | | | | | | | | | | | X | | | | | |
| Bank Swallow Colony | | | | | | | | | | | | | | | | | | | | |
| Mission Blue Butterfly | | X | X | | | | X | X | X | | X | | | | | | | | | |
| Red-legged Frog/S.F. Garter Snake | X | X | X - Cattle Hill | X | | | | | | X? | X | | | | | | X? | | | |
| Tidewater Goby | | | | | | | | | | | | | | | | | | X | | |
| Salmonids | | | | | X | X | X | | | | | | | | | | | X | | |
| **3. Visitor Experience - including recreational and aesthetic resources; disturbance** | X | | | | | | | X | | X | | X | | X | X | X | | | X | X |
| **4. Cultural Resources - erosion of earthworks** | | | | | | | X | | | | | | X | | | X | | | | |
| **5. Shorebird Concentrations** | | | | | | | | | | X;.0.7/km | | X; 4/km | | | X; 7-26/km | X; 9/km | | | | |

Note: Sites already controlled by fencing or desginated protection not listed in this table

# Adaptive Management Overview & Orientation

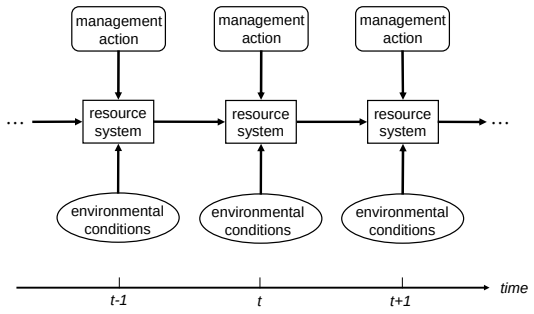
Slides used during the
May 24, 2007 broadcast

Revised May 23, 2007

## Management situation

- Management actions are taken through time
- System behavior is influenced by management actions
- Resource system is influenced by changing environmental conditions
- There is uncertainty (or disagreement) about the expected impacts of management

## Management situation




## Management Situation

- Management occurs through time, so learning through management is possible
- The system being managed is subject to uncertainties and potential surprises
- The impacts of management are not completely understood
- Improved understanding has the potential to lead to better management

## When should AM be Used?

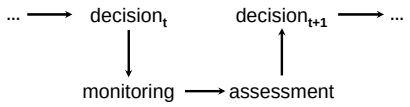
- When decision making is iterative through time
- When management is being limited by incomplete understanding of the resource system
- When clear and understandable objectives can be identified
- When uncertainty about management impacts can be described explicitly
- When monitoring is in place or can be put in place

## Five key elements in the application of AM

- Stakeholder involvement
- Management objectives
- Management alternatives
- Predictions of the effects of potential management actions
- Monitoring protocols and plans

These elements are folded into structured process of decision making, monitoring, and assessment

## Decision-making Process in AM




- Decisions are guided by management objectives at each time
- Monitoring is used to track system responses to management
- New information from monitoring is combined with previously collected information and models to produce improved understanding
- Decisions are adjusted in the next time period based on that improved understanding

## Two Key Outcomes

- Improved understanding over time
- Improved management over time based on that improved understanding

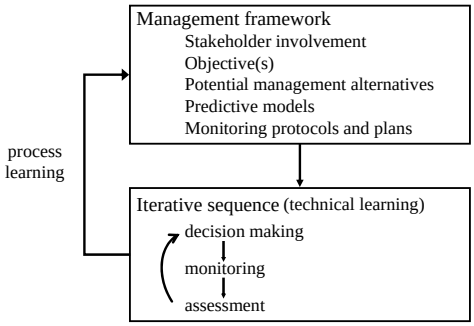
## Uncertainty in Adaptive Management

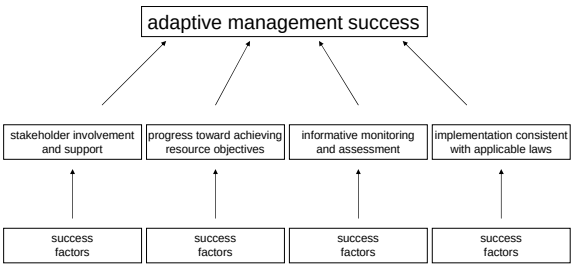
- Within the body of theory and knowledge used to understand a resource is some uncertainty
  - About a particular biological or ecological process
  - About a vital rate that controls the process
  - About how a management action will affect that process or vital rate
- Uncertainty is expressed in terms of competing hypotheses about how the resource system works
  - With each hypothesis imbedded in a resource model
  - That can be used to predict responses to management
- Predicted responses in turn can be compared against monitoring data
- Results of these comparisons are used to learn about the resource system

## Example: Sport Hunting of Waterfowl in North America

- Regulations are set each summer for fall sport waterfowl hunting
- Monitoring occurs during the fall, winter and spring
  - Size of the harvest, population status, reproduction/recruitment, breeding habitat conditions
- Analysis of data on completion of the surveys
- Incorporation of what is learned when regulations are set again the next summer
- Sequence of regulations-setting, monitoring, assessment, and feedback is known as Adaptive Harvest Management

## Adaptive Resource Management

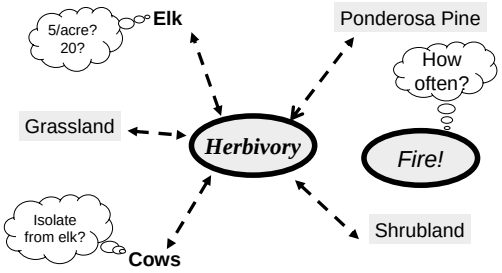



## Take-home points

- AM is designed to be science-based and objective-driven
- AM is an open, collaborative process involving stakeholders
- AM applies when
  - Management is limited by incomplete understanding of impacts
  - Improved understanding can lead to better management
- AM is not a one-size-fits-all panacea
- AM holds promise for acquiring the understanding needed to improve resource management
- The payoff with AM is the gradual improvement in management through time
  - Which means that patience and commitment are required

## Adaptive Management Operational Steps




## Adaptive Management Operational Steps

*SET – UP PHASE*

Step 1: Stakeholders as Partners
Step 2: Develop Objectives
Step 3: Develop Alternatives
Step 4: Models
Step 5: Develop Monitoring

*ITERATIVE PHASE*

Step 6: Decision
Step 7: Monitor
Step 8: Evaluation
Step 9 – Iteration

## Adaptive Management Operational Steps

*SET – UP PHASE*

Step 1: Stakeholders as Partners

## Adaptive Management Operational Steps

Step 2: Develop Objectives

Specific
Measurable
Achievable
Results - Orientated
Time - Fixed

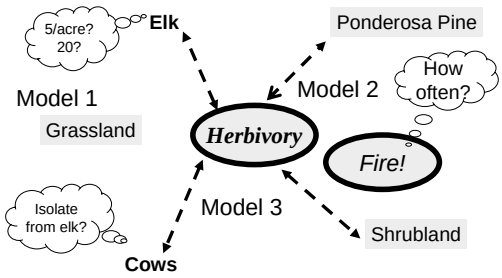
## Adaptive Management Operational Steps

Step 3: Develop Alternatives

| Spatial Scale | Ecological Organization | Social | Vegetation | Temporal (Years) |
|---|---|---|---|---|
| | Ecoregion | | | $10^5$ |
| National | | Continents | Biome | |
| | Landscape | | | |
| Regional | | Nations | Formation | $10^4$ |
| | Ecosystems/ Communities | | | |
| Land management unit and immediately surrounding areas | | States | Series | |
| | Population/Species | | | $10^3$ |
| Watersheds within unit | | Counties | Forest | |
| | Organisms/ Genes | | | |
| Sites/stands | | Neighborhood | Tree | $10^2$ |
| | | | | |
| | | Home/Family | Shrub | |
| | | | | $10^1$ |
| | | Person | | |

## Adaptive Management Operational Steps

Step 4: Develop Models



## Adaptive Management Operational Steps

Step 4: Develop Models

Model 1 Elk Herbivory
$H_o$ Unmanaged elk population numbers will have no effect on vegetation types

Model 2 Ungulate Interactions
$H_o$ There are no interactive effects between livestock and native ungulates

Model 3 Fire Effects
$H_o$ Winter prescribed burn effects will not differ from summer Rx burn effects

## Adaptive Management Operational Steps

Step 5: Develop Monitoring

Evaluate progress

Determine resource status

Increase understanding of resource dynamics

Enhance models

## Adaptive Management Operational Steps

*ITERATIVE PHASE*

Step 6: Decision

Design action
Fine tune monitoring protocols
Begin work

## Adaptive Management Operational Steps

*SET – UP PHASE*
Step 1: Stakeholders as Partners
Step 2: Develop Objectives
Step 3: Develop Alternatives
Step 4: Models
Step 5: Develop Monitoring

*ITERATIVE PHASE*
Step 6: Decision
Step 7: Monitor
Step 8: Evaluation

Step 9 – Iteration

## Adaptive Management Operational Steps

Step 9: Iteration

Check for 3 likely areas of disconnects:

Hypothesis
Monitoring assessment
Communication

## Adaptive Management Operational Steps

Step 1: Stakeholders

Process to facilitate stakeholder participation?

Lines of communication?

Stakeholder commitment?

## Adaptive Management Operational Steps

Step 2 - Objectives

Are objectives explicit and measurable?

Are objectives achievable and sustainable?

## Adaptive Management Operational Steps

Step 3 - Management Actions

Has a range of potential management actions been developed?

Does scale of alternatives match that of anticipated effects?

## Adaptive Management Operational Steps

Step 4 - Models

Enough baseline information?

Are questions involved expressed as one or more testable models?

## Adaptive Management Operational Steps

Step 5 - Monitoring Plans

Commitments in place to sustain a program?

Information available within timeframes that allow for adaptive decision making?

## Adaptive Management Operational Steps

Step 6 - Decision Making

Tradeoffs among objectives been considered and are they understood?

Is it clear how decisions will be made?

Stakeholders consulted before decisions made or changed?

## Adaptive Management Operational Steps

Step 7 - Follow-up Monitoring

Is monitoring conducted on a timely basis?

Are monitoring data available?

Adaptive Management Operational Steps

Step 8 - Assessment

Anticipated effects of actions seen,
or ecological surprises?

Is it clear how results are to be understood
and interpreted – and communicated?

Adaptive Management Operational Steps

Step 9 - Iteration

Decisions frequently reviewed?

Alternatives revisited and/or modified
over time?

## *Legal Considerations*

## *Key Points*

- Must be in compliance with all legal obligations

## *Key Points*

- Must be in compliance with all legal obligations
- Not a replacement for environmental compliance

## *Key Points*

- Must be in compliance with all legal obligations
- Not a replacement for environmental compliance
- Need to determine if the laws will allow for an adaptive management approach

- Have figure 1.1 here with the Assess, Design, and Adjust ovals colored

## *National Environmental Policy Act*
*(NEPA)*

## *Critical NEPA Planning Components*

- Develop an adaptive management framework

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- Develop an adaptive management framework
- Describe initial and subsequent actions to be taken based on monitoring results

## *Critical NEPA Planning Components*

- Develop an adaptive management framework
- Describe initial and subsequent actions to be taken based on monitoring results
- Assess the impacts of the initial actions, subsequent actions, and monitoring program.

## *Benefits in a NEPA Process*

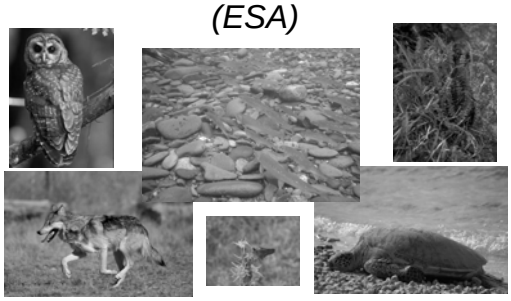
- Active and early integration of NEPA can reduce potential delays by streamlining subsequent environmental review

## *Benefits in a NEPA Process*

- Active and early integration of NEPA can reduce potential delays by streamlining subsequent environmental review
- Promotes active and effective involvement of stakeholders through its public involvement requirements

## *Federal Advisory Committee Act (FACA)*

*The Endangered Species Act*
*(ESA)*



*The Clean Water Act*

*Other Federal Efforts in Adaptive Management*

**Notes for Briefing for Frank Dean**

**Meeting with Dogwalking Representatives**

**11.13.09**

**Attendees:**
Martha Walters-Crissy Field Dog Group
Gary Fergus-Crissy Field Dog Group
Linda McKay, Fort Funston Dog Group
Laurie Kennedy Routhier-SF SPCA
Joe Hague-Professional dogwalkers
Jeri Flynn-Pacifica dogwalker
Anne Farrow-Pacifica dogwalker
Sonja Hansen-Marin dogwalker
Jane Woodman-Marin dogwalker
NPS: Frank Dean, Shirwin Smith, Chris Powell, Marybeth McFarland, Daphne Hatch, Connie Leonard

**Briefing Issues:**

1) Bites and complaints
    - Compilation of letters/emails and Stats from 2007/2008
    - Letters from 2009
    - We need them to police their consitutents

2) Fort Funston (conflicts between dogwalkers hang gliders and equestrians)
    - Thank Linda McKay for her work in reducing the conflicts
    - Issue of SF Unified School District—they've had dogs jump on the youth and/or scare them (ask them to walk in other areas when they see youth out in the park)

3) Crissy Field Gate—move gate?
    Thank Martha for sending out the email about the elephant seal on Ocean Beach

4) Scoping—dogwalkers requested chapters of the DEIS

5) They asked if there are any changes happening on the ground?

6) Professional Dogwalking

7) Behavior—civility on all sides

National Park Service

# CD8: Managing CUAs 101

**Anne Dubinsky Altman**
*Chief of Concessions, PWR*

**Jacque Lavelle**
*Concessions Chief, IMR*

February 2008

## Workshop Topics

- Interim Guidelines and Authorities
- Differences between IBPs and CUAs
- Program delegations
- Cost recovery and how to do it
- Spending money received for CUAs
- In-park vs. out-of-park
- General conditions/park specific conditions
- National Environmental Policy Act (NEPA)
- Limiting CUAs
- Insurance
- Commercial Tours
- Non profits
- Transfer/assignments of CUAs
- Data collection

# Why are we here today?

1998 Concessions Management Improvement Act P.L. 105-391, Section 418

November 2002
36 CFR 52
Proposed Rule

Interim Guidelines for CUAs November 2005

Park Planning Documents

CUA Regulation will be published in the Federal Register after Departmental Clearance

| Program Element | IBP | CUA | |
|---|---|---|---|
| **Authority** | 16 USC 1a-1 (36 CFR 1.6 and 5.3) | 16 USC 5966 (P.L. 105-391, Section 418) | **Applies to all CUAs** |
| **Permit Term** | Suggested limit of one year until regulations for CUA released | Up to two years | |
| **Cap on gross receipts** | None | 1.In-park services must be <$25,000<br>2.Out-of park services<br>• Must be approved by RD if >$100,000<br>• Must notify WASO Concessions if > $1,000,000 | |
| **Location of Services** | All services must originate and terminate outside park boundaries | Two types authorized:<br>• In-park services: services originate and are provided solely within the park area<br>• Out-of-park services: services originate and terminate outside the park area (like IBP) | |
| **Land Assignment** | None | If in-park services are location-specific, the park may assign an area or facility (e.g. fire wood sales) | **Only applies to CUAs under certain circumstances** |
| **Insurance** | Based on activity | Based on activity; if land assignment for in-park service, property insurance required | |
| **Fees** | Cost recovery for application, administration, and monitoring | Cost recovery for application, administration and monitoring; if building assignment for in-park services facility fee required | |
| **Rate Approval** | None | If authorizations are limited, the superintendent must ensure services are provided are reasonable rates | |
| **Limitations** | If appropriate, must not be limited | If appropriate, can be either unlimited or limited | |

# Delegation to Regional Director

**Delegated to Superintendents**

- Makes determination of appropriate activities.
- Makes determination if *limits* are necessary.
- Processes, *authorizes*, monitors, and tracks permits.
- Determines fees (cost recovery, monitoring, facility).
- Expends permit funds before the end of the fiscal year.

If estimated annual gross receipts > $100,000 Regional Director must **approve** CUA.

If estimated annual gross receipts > $1,000,000 Regional Director must **notify** WASO Concession Program Manager.

If limits are necessary, Superintendents are to consult with Regional Concessions program manager. To limit CUAs, the park should have completed a public planning process, such as a GMP, CSP, DCP, comply with §418, or other plan.

## Cost Recovery

- 16 U.S.C. 5966 is authority
- RM-53, Chapter 10, DM 346 provide policy guidance and examples for interpretation of the law
- Deposit into PWE 319 *(PWE 318 is Special Park Uses)*
- Since fees must be based on cost recovery, a percentage of gross receipts is not appropriate except in extremely unusual circumstances
- Fee types
  - Application
  - Administration
  - Monitoring

## Direct Costs

| | | 2006 Salary | Benefits | Hourly | Time in Hours | |
|---|---|---|---|---|---|---|
| Compliance | GS0901 | $ 38,175.00 | 1.4 | $ 25.60 | 2.0 | $ 71.67 |
| Processing | GS0401 | $ 22,519.00 | 1.3 | $ 14.02 | 1.5 | $ 27.34 |
| Accounting | GS0902 | $ 39,448.00 | 1.4 | $ 26.45 | 2.0 | $ 74.06 |
| Review and approval | GS1501 | $ 91,507.00 | 1.4 | $ 61.36 | 0.5 | $ 42.95 |

## Indirect Costs

| | |
|---|---|
| Printing/mailing | $ 5.00 |
| Training | $ 20.00 |
| Gas | $ 10.00 |

**$ 251.02**

## Spending Money

- DM 346 provide policy guidance and examples
- All funds must be spent before end of fiscal year
- Appropriate expenditures include:
  - Direct Costs
    - Personnel (wages, salaries, benefits)
    - Equipment ($1,000 or less)
    - Supplies and materials
  - Indirect
    - Budget line item for management and administration
    - Utilities, postage, safety management
    - Training

## In Park – Out of Park

- In-Park CUA
  - Service starts and/or ends inside the park
  - Money may change hands within the park
  - Land/buildings may be assigned
  - Gross receipts must be less than $25k per year
  - **Examples:** firewood sales, limited grocery sales
- Out-of-Park CUA
  - Service must start and end outside the park
  - Money may not change hands within the park
  - No limit on gross receipts, but if over $100k then must get Regional Director approval, and if over $1M the region must notify WASO
  - **Examples:** horseback riding, van tours, hiking tours

## CUA General Conditions *(Required to be part of every CUA)*

1. CUA holder cannot give false information
2. CUA holder must follow the permit, must obtain all other licenses necessary, and must provide services at reasonable rates
3. CUA holder releases NPS from liability
4. CUA holder carries general liability insurance with NPS as additional insured
5. CUA holder will pay cost recovery
6. Congress can’t benefit from the CUA

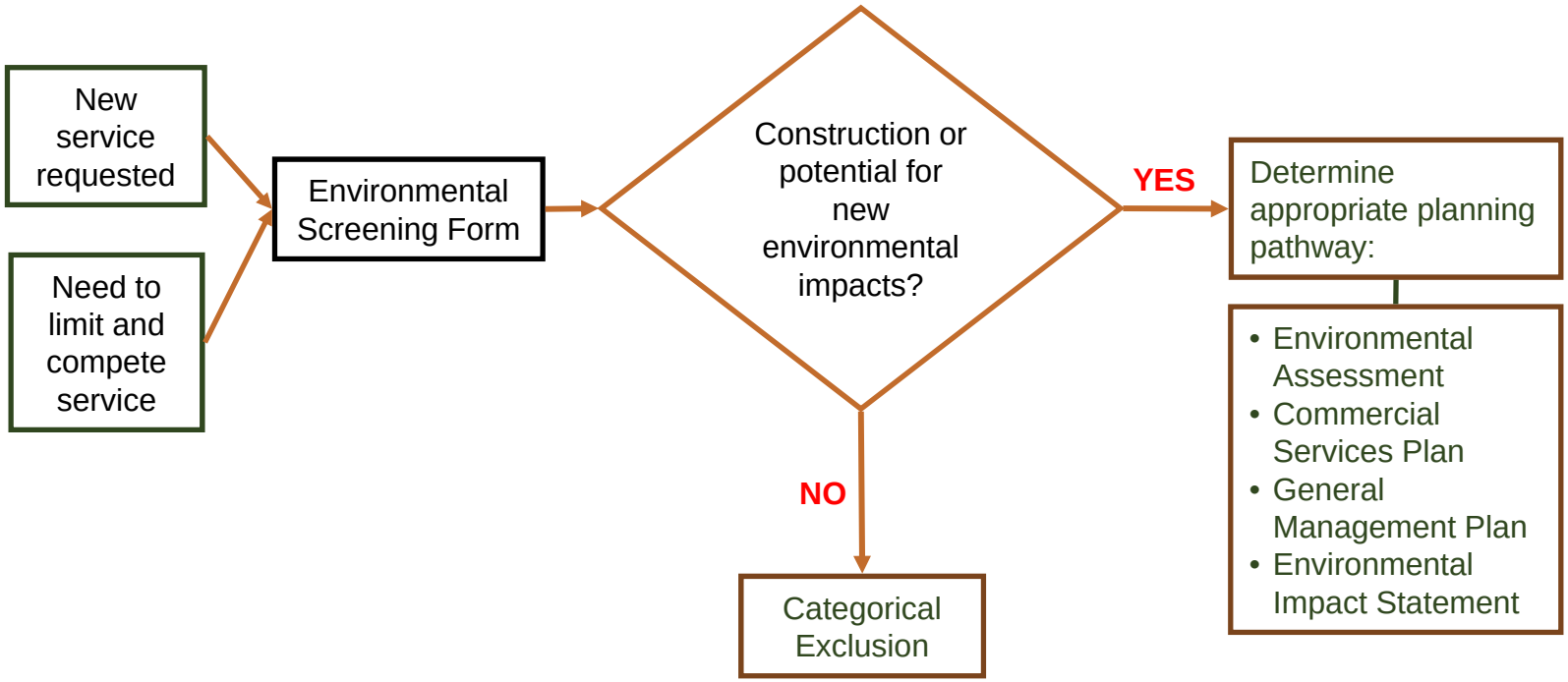
## CUA General Conditions *(Required to be part of every CUA)*

7. CUA can't be transferred or assigned without Superintendent's approval
8. Superintendent can terminate for breach or at his/her discretion
9. CUA holder has no preference in renewal; CUA is not exclusive and is not a concession contract
10. CUA holder may not construct anything in the park or disturb ground without Superintendent approval
11. CUA holder must provide annual financial and operating data
12. CUA holder must maintain books in a way that are easily identifiable and must present them to the Superintendent or GAO if asked

## Park Specific Conditions

- Make sure they don’t conflict with the general conditions
- Operating requirements
- Group size limits
- Can include specific information to be collected by the park
- Should be reviewed and updated every time a CUA is issued

# Triggering NEPA




See DO-12 for more information at:
http://www.nps.gov/policy/DOrders/RM12.pdf

## When you Can Limit the Number of CUAs

- Publicly vetted planning process (such as a NEPA process) to set limits should support limits and comply with §418
- Must consult with region before limiting number of CUAs
- Attend the limiting presentation for more information on how to limit CUAs

## Insurance

- Use State limits and recreation industry limits if readily available
- NPS-48, Chapter 23 is the program guide

- Foreign Insurance Company
  - Verify the minimum coverages are in place, the U.S. is listed as additional insured and the insurance company can pay claims in the U.S.
- New Insurance Limits
  - A new draft insurance chapter is undergoing internal review; limits are identified at $1M per and $2M aggregate for all operators grossing less than $3M annually

## Commercial Tours

- No double charging commercial road based entities*
- Parks decide which charge should be applied
- Issue CUA if administratively feasible
- Notify travel industry 1 year in advance of fee changes

- From Commercial Tour Fee Schedule:
  - ***Commercial Tour**: A commercial tour consists of one or more persons traveling on an itinerary that has been packaged, priced, or sold for leisure/recreational purposes by an organization that realizes financial gain through the provision of the service

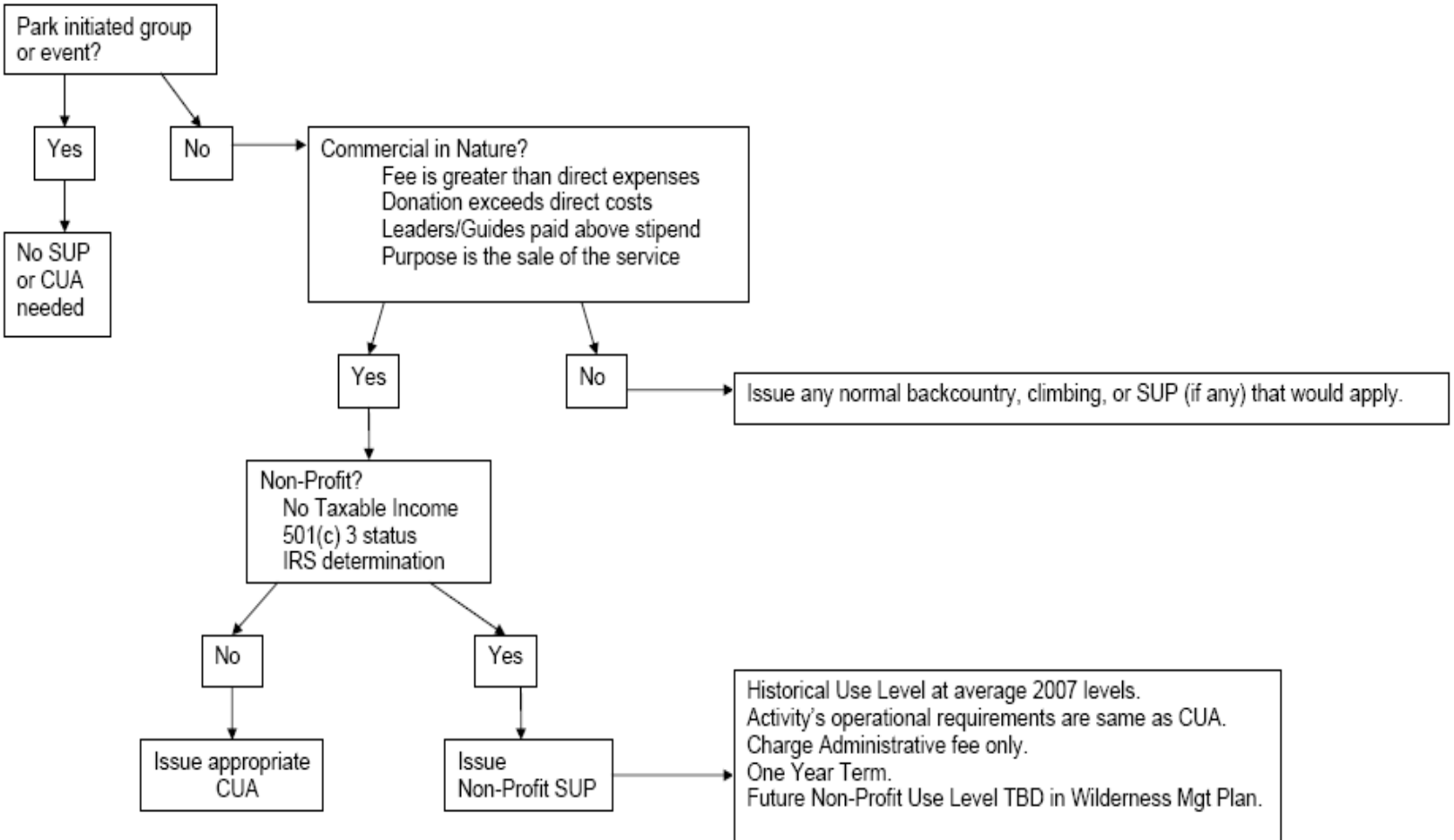
## Non-Profit Organizations

- Rules of Thumb
  - CUA not required if no taxable income
  - Special Use Permit may still be required

- Parks can use a verification form, developed by the Alaska Region, requesting organizations to attest that no taxable income is derived from this activity:
  - http://www.nps.gov/akso/concessions/NonProfitsAppSUP2006.pdf

  OR
  - Parks can request a copy of the IRS Form 990 and check guidestar.org
- What if a non-profit wants a CUA?
  - We may honor this request; Park should consult with Region and WASO on this issue

# Non-Profit Special Use Permit / CUA Flowchart



## Transferring/Assigning CUAs

- General conditions state that Superintendent must approve transfer/assignment
- Transfers are not necessary because:
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  OR
  - CUAs are limited and competed
- These conditions ensure that CUA has no long-term monetary value

# Data Collection

| |
|---|
| Park Alpha Code |
| Park Program Manager |
| Phone |
| Number of CUAs in 2006 |
| Number of CUAs with Gross Receipts > $100,000 |
| Number of CUAs with Gross Receipts > $1,000,000 |
| Total reported annual receipts for CY2006 |
| List planning documents which support program |
| Are renewals once annually or on-going? |
| Primary service types provided through CUAs |
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| Does the unit have Commercial Bus Tours authorized under CUAs |
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## Slide 20

**Jutte1**

This is a MAJOR SECTION title slide. It should only be used in large presentations which have two or three, clearly divisible sections.

J. Ernest Jutte, 1/15/2008

tional Park Service

# CD8: Managing CUAs 101

tional Park Service

# 2008 Concession Conference

*Connecting People to Parks*

National Park Service

# CD8: Managing CUAs 101

**Anne Dubinsky Altman**
*Chief of Concessions, PWR*

**Jacque Lavelle**
*Concessions Chief, IMR*

February 2008

## Workshop Topics

- Interim Guidelines and Authorities
- Differences between IBPs and CUAs
- Program delegations
- Cost recovery and how to do it
- Spending money received for CUAs
- In-park vs. out-of-park
- General conditions/park specific conditions
- National Environmental Policy Act (NEPA)
- Limiting CUAs
- Insurance
- Commercial Tours
- Non profits
- Transfer/assignments of CUAs
- Data collection

# Why are we here today?

1998 Concessions Management Improvement Act P.L. 105-391, Section 418

November 2002
36 CFR 52
Proposed Rule

Interim Guidelines for CUAs November 2005

Park Planning Documents

CUA Regulation will be published in the Federal Register after Departmental Clearance

| Program Element | IBP | CUA | |
|---|---|---|---|
| **Authority** | 16 USC 1a-1 (36 CFR 1.6 and 5.3) | 16 USC 5966 (P.L. 105-391, Section 418) | **Applies to all CUAs** |
| **Permit Term** | Suggested limit of one year until regulations for CUA released | Up to two years | |
| **Cap on gross receipts** | None | 1.In-park services must be <$25,000<br>2.Out-of park services<br>• Must be approved by RD if >$100,000<br>• Must notify WASO Concessions if > $1,000,000 | |
| **Location of Services** | All services must originate and terminate outside park boundaries | Two types authorized:<br>• In-park services: services originate and are provided solely within the park area<br>• Out-of-park services: services originate and terminate outside the park area (like IBP) | |
| **Land Assignment** | None | If in-park services are location-specific, the park may assign an area or facility (e.g. fire wood sales) | **Only applies to CUAs under certain circumstances** |
| **Insurance** | Based on activity | Based on activity; if land assignment for in-park service, property insurance required | |
| **Fees** | Cost recovery for application, administration, and monitoring | Cost recovery for application, administration and monitoring; if building assignment for in-park services facility fee required | |
| **Rate Approval** | None | If authorizations are limited, the superintendent must ensure services are provided are reasonable rates | |
| **Limitations** | If appropriate, must not be limited | If appropriate, can be either unlimited or limited | |

# Delegation to Regional Director

**Delegated to Superintendents**

- Makes determination of appropriate activities.
- Makes determination if *limits* are necessary.
- Processes, *authorizes*, monitors, and tracks permits.
- Determines fees (cost recovery, monitoring, facility).
- Expends permit funds before the end of the fiscal year.

If estimated annual gross receipts > $100,000 Regional Director must **approve** CUA.

If estimated annual gross receipts > $1,000,000 Regional Director must **notify** WASO Concession Program Manager.

If limits are necessary, Superintendents are to consult with Regional Concessions program manager. To limit CUAs, the park should have completed a public planning process, such as a GMP, CSP, DCP, comply with §418, or other plan.

## Cost Recovery

- 16 U.S.C. 5966 is authority
- RM-53, Chapter 10, DM 346 provide policy guidance and examples for interpretation of the law
- Deposit into PWE 319 *(PWE 318 is Special Park Uses)*
- Since fees must be based on cost recovery, a percentage of gross receipts is not appropriate except in extremely unusual circumstances
- Fee types
  - Application
  - Administration
  - Monitoring

## Direct Costs

| | | 2006 Salary | Benefits | Hourly | Time in Hours | |
|---|---|---|---|---|---|---|
| Compliance | GS0901 | $ 38,175.00 | 1.4 | $ 25.60 | 2.0 | $ 71.67 |
| Processing | GS0401 | $ 22,519.00 | 1.3 | $ 14.02 | 1.5 | $ 27.34 |
| Accounting | GS0902 | $ 39,448.00 | 1.4 | $ 26.45 | 2.0 | $ 74.06 |
| Review and approval | GS1501 | $ 91,507.00 | 1.4 | $ 61.36 | 0.5 | $ 42.95 |

## Indirect Costs

| | |
|---|---|
| Printing/mailing | $ 5.00 |
| Training | $ 20.00 |
| Gas | $ 10.00 |

**$ 251.02**

## Spending Money

- DM 346 provide policy guidance and examples
- All funds must be spent before end of fiscal year
- Appropriate expenditures include:
  - Direct Costs
    - Personnel (wages, salaries, benefits)
    - Equipment ($1,000 or less)
    - Supplies and materials
  - Indirect
    - Budget line item for management and administration
    - Utilities, postage, safety management
    - Training

## In Park – Out of Park

- In-Park CUA
  - Service starts and/or ends inside the park
  - Money may change hands within the park
  - Land/buildings may be assigned
  - Gross receipts must be less than $25k per year
  - **Examples:** firewood sales, limited grocery sales
- Out-of-Park CUA
  - Service must start and end outside the park
  - Money may not change hands within the park
  - No limit on gross receipts, but if over $100k then must get Regional Director approval, and if over $1M the region must notify WASO
  - **Examples:** horseback riding, van tours, hiking tours

## CUA General Conditions *(Required to be part of every CUA)*

1. CUA holder cannot give false information
2. CUA holder must follow the permit, must obtain all other licenses necessary, and must provide services at reasonable rates
3. CUA holder releases NPS from liability
4. CUA holder carries general liability insurance with NPS as additional insured
5. CUA holder will pay cost recovery
6. Congress can’t benefit from the CUA

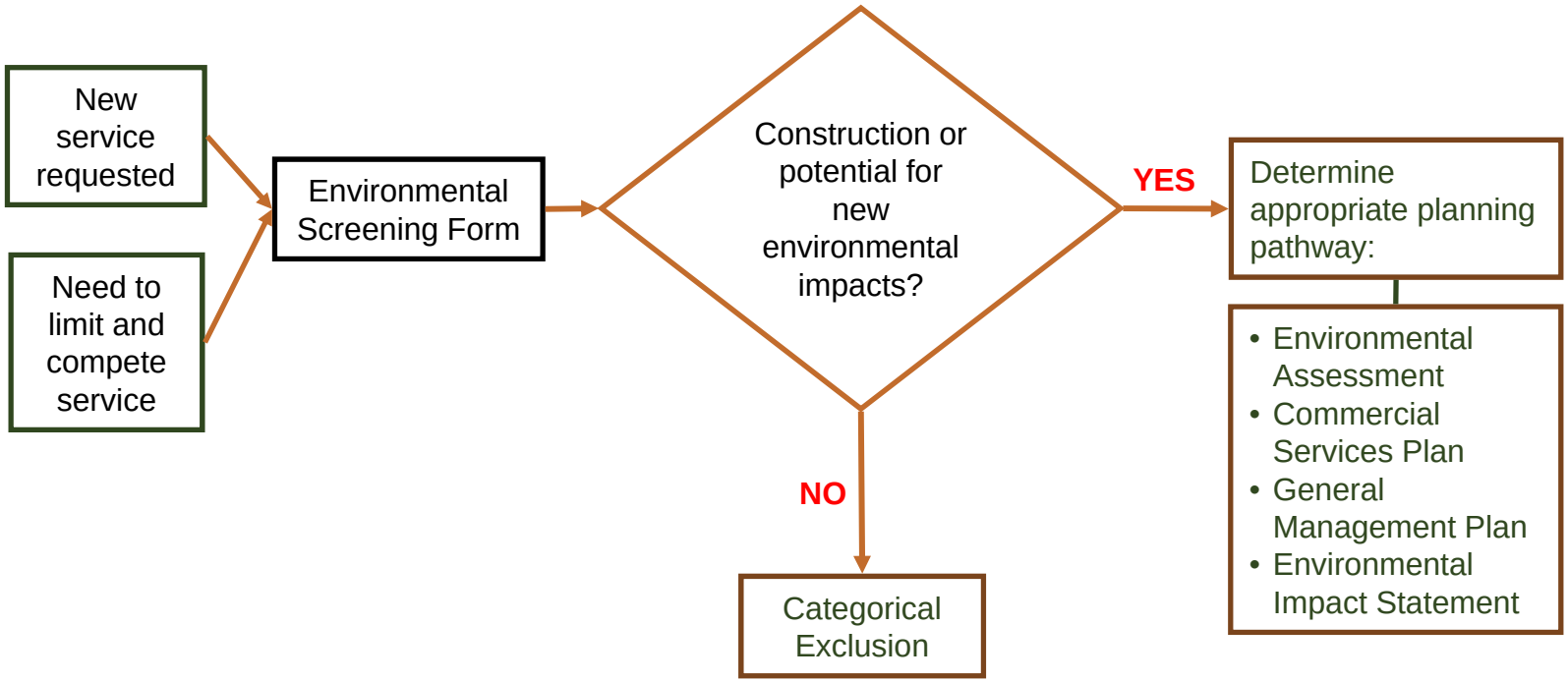
## CUA General Conditions *(Required to be part of every CUA)*

7. CUA can't be transferred or assigned without Superintendent's approval
8. Superintendent can terminate for breach or at his/her discretion
9. CUA holder has no preference in renewal; CUA is not exclusive and is not a concession contract
10. CUA holder may not construct anything in the park or disturb ground without Superintendent approval
11. CUA holder must provide annual financial and operating data
12. CUA holder must maintain books in a way that are easily identifiable and must present them to the Superintendent or GAO if asked

## Park Specific Conditions

- Make sure they don’t conflict with the general conditions
- Operating requirements
- Group size limits
- Can include specific information to be collected by the park
- Should be reviewed and updated every time a CUA is issued

# Triggering NEPA

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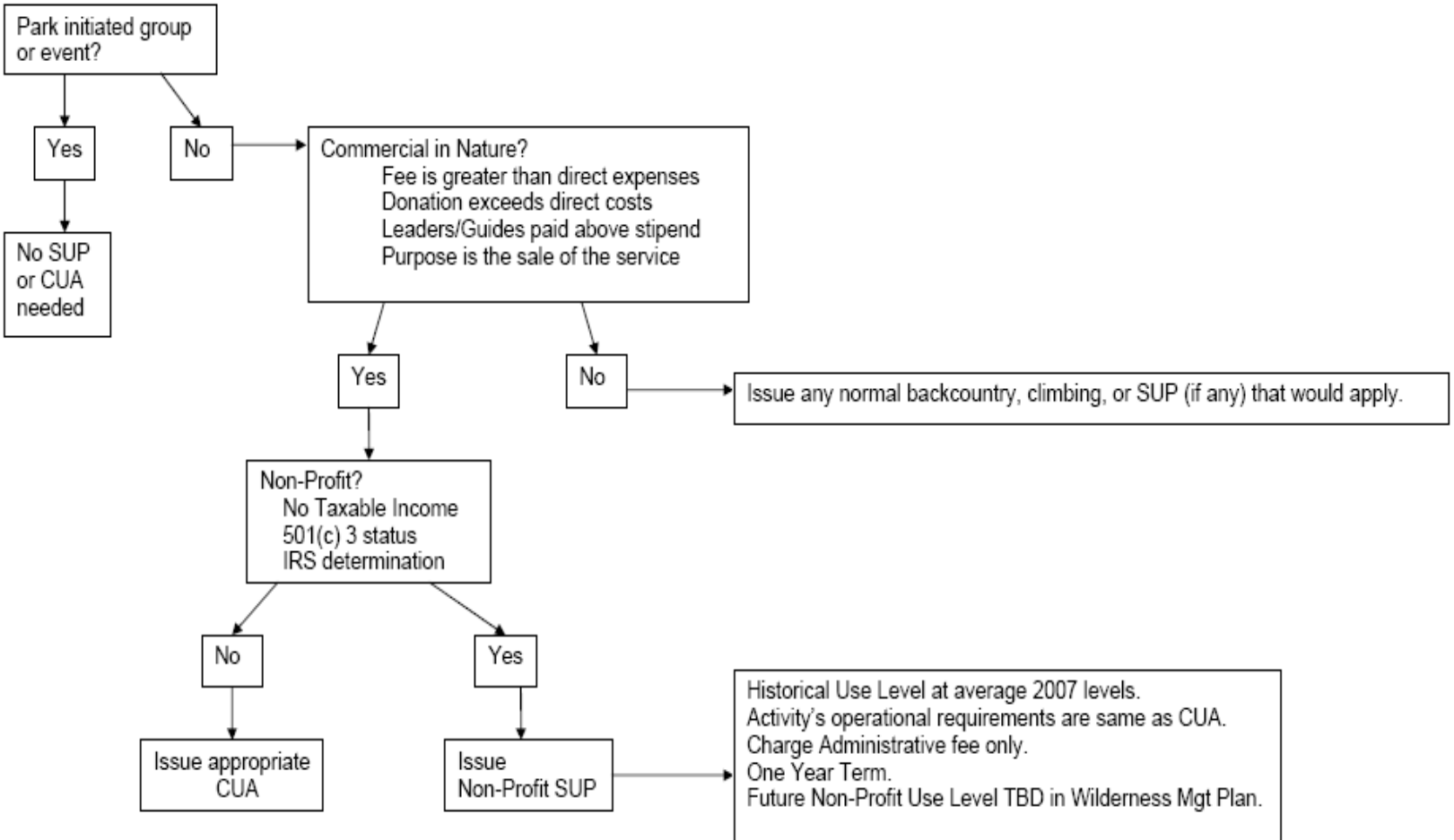

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J. Ernest Jutte, 1/15/2008

tional Park Service

# CD8: Managing CUAs 101

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# 2008 Concession Conference

*Connecting People to Parks*

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SUPERINTENDENT'S OFFICE

F. Dean
Cy: C. Kenkel
R. Wiedeman
S. Smith
C. Powell
Lori

Crissy Field Dog Group
A CALIFORNIA NON-PROFIT ORGANIZATION

P.O. Box 475372 San Francisco, CA 94147-5372 Please Visit Our Website: www.crissyfielddog.org

November 23, 2009

Frank Dean
Acting Superintendent, GGNRA
Building 201, Ft. Mason
San Francisco, CA 94123

Dear Mr. Dean,

On behalf of the GGNRA Dog Caucus, I want to thank you for taking the time from your busy schedule to meet with us on Friday, November 13th. We all thought the meeting was productive as there was constructive dialogue and wanted to follow up with you and GGNRA staff.

As we understand from the meeting, GGNRA staff will put Linda McKay (Ft. Funston Dog) in contact with the concerned San Francisco schoolteacher to discuss options concerning kids and dogs at the environmental education center at Fort Funston. These options could include having the SF SPCA provide their dog safety program as an educational opportunity for the kids and dogs.

And we support SF Dog, Ft. Funston Dog, and the US Park police meeting soon to develop a horse and dog sensitivity training at Ft. Funston.

We also understand from the meeting that the GGNRA has installed "metal birds" on posts at Ocean Beach as to delineate the Wildlife Protection Area there. We support the installation of these "metal birds" at the Crissy Field WPA as well. The WPA signs at Crissy Field are not high enough for most park visitors to see clearly.

In addition, you informed our group that the "fence" at the Crissy Field WPA at West Beach will be moved soon 130 feet westward to conform to the WPA boundary as identified in the Crissy Field WPA Compendium. We appreciate your effort to insure accuracy of the WPA boundary. It is very important for the Crissy Field Dog Group and its members that the GGNRA be as accurate as possible. We think that a football field length discrepancy is not an approximate measurement. CFDG would like to be notified when the fence will be moved westward.

CFDG is also concerned that the enforcement of the WPA at West Beach be carried out in a more objective way. We are not comfortable with the double standard that has developed there, as there are many children who play in the high dunes where the snowy plover rests as well as large organized groups of children and adults. These activities do affect the plover and we expect enforcement to be carried out for not just dogs but for humans and their impacts at the WPA.

This is also a concern at the Ocean Beach WPA; horses, jeeps, etc. go zooming through the WPA, flushing out the plovers and no enforcement action or outreach and education is taken with these park visitor groups.

We also want to reconfirm that the GGNRA's efforts to change the name from the National Park Service's Golden Gate National Recreation Area to the Golden Gate National Parks are not going forward from your perspective. We hope that you can address your nps.gov/goga website issue soon that misnames it as the Golden Gate National Parks by making sure that the correct name is used on your website. As you stated, the GGNRA is its legal name and the GGNPA name is being used for marketing purposes. We sure hope that places such as the Warming Hut (and associated merchandise and banners) will soon reflect the corrected same name change concern.

I understand that the GGNRA staff will follow up and you will meet with the San Mateo and Marin counties dog groups soon. This is a very important step forward as off leash recreation is critical in all of these three counties that the GGNRA land encompasses. We look forward to these meetings.

And as I suggested during the closing moments of the meeting, we were encouraged by the thoughtful dialogue at this meeting and propose that the GGNRA and our Dog Caucus meet every several months. We also support having an informal meeting with other GGNRA recreational user groups so we can discuss issues or concerns in a friendly and constructive manner.

Please thank Chris Powell for organizing this very productive meeting.

We hope to meet with you and your staff in January or early February 2010 to further our on-going dialogue.

Sincerely,

Martha Walters

Martha Walters
Chair, Crissy Field Dog Group

Cc: House Speaker Nancy Pelosi
Terri McCullough, Speaker Pelosi's office
Dan Bernal, Speaker Pelosi's office

Gary Fergus, CFDG
Jeri Flinn, Pacifica Dog
Anne farrow, Pacifica Dog
Sonja Hanson, Marin Unleashed
Linda McKay, Fort Funston
Sally Stephens, SF Dog

**Draft Compliance-Based Management Strategy**
**GGNRA dog management plan/EIS**

Background:

The compliance-based management strategy has been designed to encourage compliance with sections of the Code of Federal Regulations (CFR) applicable to dog management, and ensure protection of park resources, visitors and staff. It will provide the framework for monitoring and recording observed noncompliance with the applicable sections of the CFR, including the new 36 CFR Part 7 special regulation, and will guide use of park resources to address those violations. Noncompliance with federal regulations related to dog management will be met with a range of management responses.

Timeline:

Monitoring will begin with plan implementation, or soon thereafter. A detailed monitoring plan will be developed to guide compliance monitoring, data management, and reporting.

All areas and zones (see FAQ 1 below) addressed by the dog management plan will be subject to monitoring. Starting with the implementation of the dog management plan, months 1-3 will be a public education period, and in months 3-6 the monitoring strategy will be tested. During months 6-18, a baseline of numbers and rates of visitors with and without dogs, numbers of dogs per visitor, type of use (on-leash or voice-control) and noncompliance with regulations (includes noncompliance observed but not resulting in citations) will be established. After this baseline has been established, monitoring efforts may be prioritized, with the park reducing the frequency of monitoring in low use or high compliance areas to focus on areas with high use or low compliance as needed. Monitoring will continue in all areas for at least 4 years. However, all areas addressed in the dog management plan will be periodically monitored for changes in baseline to reprioritize monitoring as needed. Park management responses will focus on areas with demonstrated noncompliance with the regulations, as described in the primary management response section below. Monitoring will inform park management and law enforcement when, where, and how to prioritize responses to noncompliance. If the rolling 12 month average for compliance in any of the management zones addressed by the dog management plan falls below 75% (measured as the percentage of total dogs / dog walkers observed during the previous 12 months not in compliance with the regulations), park management actions as described in the secondary management response will be implemented. The initial 12 month rolling average is based on data collected during months 6-18 after the dog management plan initiation. Regular monitoring of an area over a 12 month period is required before secondary management responses (see below) can be implemented.

NPS will prepare annual reports documenting monitoring data collected and any consequent management actions, which will be made available to the public. NPS will also release a preliminary report providing baseline data after the first 6 months of monitoring (month 12 after plan initiation).

Standard: Compliance with federal regulations applicable to dog management.

Indicators: Noncompliance with federal regulations applicable to dog management (see chart below).

| Vegetation Damage | Wildlife Disturbance | Disturbance to T&E Species | Violation of Areas Closed to Dogs (T/E and Sensitive Habitat) | Violation of Areas Closed to All (T/E and Sensitive Habitat) | Violation of Areas Closed to Dogs (Safety) | Hazardous Condition (aggressive behavior, pet rescues) | Degree of Compliance with special regulation (no dogs, on-leash, ROLA) | Gov't Property Damage | Pet Excrement |
|---|---|---|---|---|---|---|---|---|---|
| 36 CFR 2.1 (a) (1) (ii) | 36 CFR 2.2(a)(2) | 36 CFR 2.2 (a) (2), 50 CFR Part 17 | NEW PART 7 SPECIAL REGULATION | 36 CFR 1.5 (f) | 36 CFR 1.5 (f), NEW PART 7 SPECIAL REGULATION | 36 CFR 2.34 (a) | NEW 36 CFR PART 7 SPECIAL REGULATION | 36 CFR 2.31 (a) (3) | 36 CFR 2.15 (a) (5) |

Triggers and management responses:

1. Primary management response: When noncompliance is observed at an area, NPS would weigh appropriate management options and would respond from a suite of potential actions that include: focused enforcement of regulations, education (e.g., additional information and regulatory signs and exhibits, brochures and fliers, public meetings, meetings with user groups, etc.), establishment of buffer zones to protect sensitive habitat and species, time/use restrictions, and SUP restrictions.
    a. Areas with the highest rates of noncompliance, and/or sensitive resources, will receive first priority for primary management responses[1].
    b. Aggressive dogs or unsafe behavior (e.g. resulting in cliff rescues) are treated on an individual, case-by-case basis, and may result in banning a particular dog from the park, or if applicable, a special use permit (SUP) restriction. However, violations recorded by the monitoring team will count towards the rate of noncompliance.

2. Secondary management response: When compliance falls below 75% over a yearly rolling average (measured as the percentage of total dogs / dog walkers observed during the previous 12 months not in compliance with the regulations), in a management zone (on-leash, voice-control, or no dogs) in any of the specific areas addressed by the plan, the zone's management changes to the next more restrictive level of dog management, for example:

[1] If Section 7 consultation pursuant to the Endangered Species Act requires preparation of a Biological Opinion, management responses related to threatened and endangered species will be governed by the Terms and Conditions described in the Biological Opinion, and would be separate from the compliance based strategy. Emergency closures for listed species protection may also occur outside of the compliance-based strategy.

ROLA to on-leash, or on-leash to no dogs. The secondary management response could not be implemented until after the first 18 months, during which the monitoring plan will be tested and baseline data collection begun. Note that primary management responses may continue to apply.

**FAQ's:**

1. What is an area versus a zone? An area is a specific geographic site. The dog management plan addresses 21 areas, plus new lands. A zone denotes a type of use allowed in an area (on leash, voice-control, or no dogs). An area may have more than one zone, depending on the alternative.
2. Will the monitoring plan be peer-reviewed before implementation? Yes, the plan will be subject to peer review, as required by DOI policy to ensure integrity of scientific data. Such a review will include monitoring protocols to ensure statistical rigor and accuracy, and training of monitoring staff to ensure uniform measurement and interpretation of data.
3. How do law enforcement citations or other instances of noncompliance, such as a case incident report, factor into the 75% criteria in the secondary management response? While violations will likely occur that are not documented by the monitoring team, including those resulting in law enforcement citations, those would not count towards the cumulative total for a particular zone, because the number of incidents of noncompliance at any zone must be measured against the total number of dogs in the area during monitoring. However, all violations reported to the park, including citations, may be used to inform the monitoring team where to focus its efforts.
4. Does baseline information factor into the 75% criteria in the secondary management response? No. Baseline information is used to prioritize monitoring initially, and reevaluate monitoring if use patterns change. It does not set a standard against which the 75% criteria is measured. The 75% criteria is measured as the percentage of total dogs / dog walkers observed during the previous 12 months not in compliance with the regulations.
5. What are some examples of the compliance-based strategy in practice at different periods in time?
    a. Month 15 of the plan implementation: The monitoring team visits a specific area at random times of the day and week. The team will count the total number of dogs, dog walkers and types of use (on-leash, voice control) over a pre-set monitoring period, while also recording the number of violations in each zone contained in the area. This information will be compiled with the preceding months' monitoring data to develop a cumulative total number of dogs and violations. Information gained through monitoring will direct use of park resources to initiate primary management responses as required. In 3 more

months the monitoring team will have 12 months of data to evaluate, to determine if a secondary management response is warranted.

b. Month 18 of the plan: The monitoring team has continued to visit this specific area at random times of the day and week, following the same monitoring protocols as noted above. If compliance falls below 75% based on the previous 12 months' monitoring data in one of the zones, in spite of the park's primary management actions, the zone will change to the next most restrictive dog management regulation.

6. What kind of public notice will be provided before initiation of the secondary management response? The public will receive notice when an area is approaching the 75% compliance benchmark, that is, if compliance decreases the public will be notified before compliance falls to 75%, most likely through a website, notices posted in the specific area, and outreach to affected groups.
7. After the secondary management strategy has been initiated, if compliance later rises above 75%, can a zone within an area be changed back to the next least restrictive management regime? No. The secondary management response is a permanent change given NPS's limited administrative resources. The NPS goal is that compliance rates stay above 75% after the primary management response, but believes that the possibility of a permanent secondary management response will help ensure this.
8. Why is the secondary management response set at a 75% compliance rate? The dog management plan/EIS and the resulting special regulation, along with existing regulations applicable to dog management, determine appropriate behavior for visitors with dogs within Golden Gate National Recreation Area. NPS does not condone any level of noncompliance, and the primary management response detailed above is sufficient to address noncompliance where it is not widespread. The secondary management response is meant to apply when it is clear that park management has been unable to reduce noncompliance through conventional means, and when there is continued and widespread noncompliance occurring over a longer period of time, at which point the benefits in allowing the use is outweighed by the NPS administrative burden required to manage the use, draining limited resources needed for other important park programs. The secondary management response provides visitors with dogs an additional incentive to comply with the dog regulations, and because it is site-specific, it encourages a communal response to address noncompliance. It also places a burden on NPS to take an initial, proactive approach to dog management by addressing individual violators and by increasing public awareness through community education and outreach, and not punish the majority for individual or isolated violations. At the same time, this secondary response is intended to ensure that NPS does not allow activities that do not correspond with its primary conservation mandate. It recognizes that NPS has multiple competing priorities to address with its funding and does not have unlimited resources with which to ensure

compliance with dog regulations. Compliance less than 75% would not be acceptable for park operations, and could only be addressed through increased restrictions.

9. Rationale for 18 month period before a secondary management response could initially be applied:
    a. Months 0-6: provides for a 3 month public education period after plan implementation, and an additional 3 months to test, possibly modify, and implement the monitoring plan.
    b. Months 7-18: provides one year to implement the full range of possible management actions addressing noncompliance as outlined in the primary management response, and provides 12 months of monitoring data.
    c. One year rolling average is measured at the end of each month; after the initial 18 months action could be taken after any month as long as there are 11 consecutive preceding months of data.

PROPOSED RULES

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 52

RIN 1024-AC85

Commercial Use Authorizations

Wednesday, November 27, 2002

***70899** AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish National Park Service (NPS) regulations concerning the issuance and administration of commercial use authorizations. Commercial use authorizations are a form of NPS written authorization under which persons are allowed to provide certain commercial services to visitors of areas of the national park system. The issuance of commercial use authorizations is authorized by Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105-391. The proposed commercial use authorization program will replace the current NPS "incidental business permit" program when adopted.

DATES: Written comments on the rulemaking must be received on or before January 27, 2003. Written comments on the information collection must be received by Office of Management and Budget on or before December 27, 2002.

ADDRESSES: Written comments for the rulemaking should be sent to Cynthia Orlando, Concessions Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. Fax: (202) 371-2090. Email: WASO-- Regulations@nps.gov. Written comments for the information collection should be sent to Attention Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. Fax: (202) 371-2090.

SUPPLEMENTARY INFORMATION:

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Background

Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105-391 authorizes NPS to issue commercial use authorizations to persons to provide commercial services to visitors of areas of the national park system. There are two types of commercial use authorizations, incidental activity commercial use authorizations and in-park commercial use authorizations. The types of commercial activities that may be authorized under commercial use authorizations are similar in many respects to the type of activities that are authorized by concession contracts issued under 36 CFR part 51, as amended. Generally, however, commercial use authorizations, unlike concession contracts, do not authorize the construction of improvements in a park area by a holder, and, except in limited circumstances, require that the services provided by the holder begin and end outside of a park area. The proposed regulations when finalized will assure that all NPS commercial use authorizations are issued or solicited and awarded consistently and that the private sector will be aware of NPS authorizing procedures. The proposed commercial use authorization program will replace the current NPS "incidental business permit" program when adopted.

Section 52.1 Authority and Purposes generally describes the authorities for and purposes of the proposed rule. The basic authority is 16 U.S.C. 1 et seq., the National Park Service Organic Act. This is supplemented by section 418 of the National Parks Omnibus Management Act of 1998, 16 U.S.C. 5966. Commercial use authorizations may authorize commercial services in park areas that are similar to or the same as some types of services authorized by concession contracts issued by the Director under 36 CFR Part 51. Concession contracts may be issued to authorize the provision of services to visitors rather than a commercial use authorization even though the proposed services may be suitable to authorization under a commercial use authorization. The Director may only issue commercial use authorizations under the terms and conditions of this part.

Drafting Information

The primary authors of this rule are the members of a team of NPS officials that manage commercial activities in units of the National Park System.

Compliance with Other Laws

*Regulatory Planning and Review (Executive Order 12866)*

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget makes the final determination as to the significance of this regulatory action and it has determined that this document is a significant rule and is subject to review.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competi-

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tion, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. ***70900**

(4) This rule does not raise novel legal or policy issues.

*Regulatory Flexibility Act*

This rule is not subject to the Regulatory Flexibility Act as it is not required to be published for comment before adoption by 5 U.S.C. 553 or other law. (5 U.S.C. 553 does not apply to regulations regarding contracts or public lands.) NPS is soliciting public comment on this proposed rule as a matter of policy.

However, NPS considers that, even if the proposed regulations were subject to the Regulatory Flexibility Act, they would not have a significant effect on a substantial number of small businesses within the meaning of the Act. This is because the proposed regulations generally only codify, in response to Section 418 of Public Law 105-391, NPS's current requirements regarding incidental business permits. After the proposed regulations are finalized, incidental business permits will be replaced by commercial use authorizations with no anticipated significant changes to the program as currently implemented. In addition, although the large majority of the some 4,000 businesses now holding incidental business permits are "small businesses" within the meaning of the Regulatory Flexibility Act, these businesses (firewood sales, trail guiding, tow truck operators, etc.) represent only a minuscule fraction of the total number of such businesses operating in the United States. In this connection, NPS also notes that the proposed regulations do not in fact "regulate" small businesses in the usual sense of the word. This is because no business is subject to the proposed regulations unless its owner seeks to conduct commercial activities on federal land. The regulations have no applicability to the activities of any business that is not conducted on federal lands.

*Small Business Regulatory Enforcement Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Fairness Enforcement Act. This rule does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual entities, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary effect of the proposed rule is to establish policies and procedures for the issuance of commercial use authorizations for areas of the National Park System.

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*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

*Takings (Executive Order 12630)*

In accordance with Executive Order 12360, this rule does not have significant takings implications as this rule does not apply to private property. A takings assessment is not required.

*Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no requirements on any governmental entity other than NPS.

*Civil Justice Reform (Executive Order 12998)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This rule requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. An OMB form 83-I has been reviewed by the Department and sent to the Office of Management and Budget (OMB) for approval. OMB has up to 60 days to approve or disapprove this information collection but may respond after 30 days. Therefore, in order to assure maximum consideration, written comments, suggestions or objections should be submitted on or before December 27, 2002 to Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. Also, provide a copy of any written comments on this information collection submitted to OMB by mail to: Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. E-mail: Cindy--Orlando@nps.gov.

The information collection contained in this proposed regulation is entitled Commercial Use Authorization, Issuance and Reporting Requirements. This collection is based on the requirement for persons interested in conducting business within national parks to provide information regarding their business (documented in the CUA form submitted for approval), provide a non-refundable application fee when filing, and annually report gross receipts from business conducted within national parks. The initial request and the CUA form allows the holder to apply for and

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conduct business in national parks and the NPS to retain a written record of the holder's business information. The application fee is used to recover the administrative costs associated with issuing the CUA permit. The reporting requirement enables the NPS to verify that the holder has received less than $25,000 in gross receipts for business conducted within national parks and determines eligibility for the CUA.

The NPS expects to receive/award about 3,500 applicants annually. Holders will be required to report gross receipts once a year to the NPS. We expect the annual hours burden to the public to be 14,000 hours--3,500 hours for the initial request, 3,500 hours for the application and 7,000 hours for the reporting requirement. Additionally, we expect to have an annual monetary burden of $525,000 resulting from the application fee [$150 x 3,500 applicants]. The application fee total burden is based on an average fee of $150 per applicant (from a range of $50-$250 per application) and 3,500 applicants.

Regarding this information collection, the NPS specifically requests comments on whether the collection of information is necessary or the proper for the performance of the functions of the bureau, including whether the information will have practical utility; the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

National Environmental Policy Act

This rule does not constitute a major federal action affecting the quality of the human environment. A detailed statement under the National Environment Policy Act is not required. The rule will not increase public use of ***70901** park areas, introduce non-compatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects on the tribes.

Clarity of This Rule

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Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity? (3) Does the format of the rule (groupings and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more but shorter sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? (6) What else could be done to make the rule easier to understand?

Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Public Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Cindy Orlando, National Park Service, 1849 C Street, NW., (2410), Washington, DC 20240. You may also comment via the Internet to WASO--Regulations@nps.gov. Please also include "Attn: RIN 1024- AC85" in the subject line and your name and return address in your Internet message. You may fax your comments to (202) 371-2090. Finally, you may hand-deliver comments to Cindy Orlando, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

List of Subjects in 36 CFR Part 52

Concessions, National parks, Small businesses.

Accordingly, we propose to add 36 CFR Part 52 to read as follows:

PART 52--COMMERCIAL USE AUTHORIZATIONS

Subpart A--Authority Purpose and Definitions

Sec.

52.1 What does this part cover?

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52.2 Are commercial bus tour permits covered by this part?

52.3 How are certain terms defined in this part?

Subpart B--Issuance of Commercial Use Authorizations

52.4 What general conditions apply to the issuance of commercial use authorizations?

52.5 What are examples of an incidental activity commercial use authorization?

52.6 What are examples of an in-park commercial use authorization?

52.7 Is a non-profit organization required to obtain a commercial use authorization in order to provide services to visitors in a park area?

52.8 When must the Director limit the number of Special Park Use Permits to be issued to a park area?

Subpart C--Issuance of Commercial Use Authorizations

52.9 Who may be issued a commercial use authorization?

52.10 How does a person request the issuance of a commercial use authorization?

52.11 What happens after a written request for issuance of a commercial use authorization is made?

52.12 When must the Director limit the number of commercial use authorizations to be issued?

52.13 What happens if the Director determines to limit the number of commercial use authorizations or Special Park Use Permits to be issued?

52.14 When will the Director establish visitor use limits.

52.15 What special responsibilities does the Director have if only a limited number of commercial use authorizations are issued or if the Director establishes visitor use limits?

52.16 What fees must the Director charge in connection with a commercial use authorization?

52.17 How will the Director expend fees received from holders?

Subpart D--Terms and Conditions of Commercial Use Authorizations

52.18 What is the term of a commercial use authorization?

52.19 May a commercial use authorization be transferred?

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52.20 May a commercial use authorization provide an exclusive right to provide commercial services in a park area?

52.21 May a commercial use authorization permit the construction of structures, fixtures, or improvements on lands located within the boundaries of a park area?

52.22 May the Director terminate a commercial use authorization?

52.23 What reporting requirements must a commercial use authorization contain?

52.24 May incumbent holders obtain rights or a perference to the issuance of subsequent commercial use authorizations or to particular visitor use allocations?

52.25 What records must a holder maintain and what access does the Director have to these records ?

52.26 What other terms and conditions may or must a commercial use authorization contain?

Authority: 16 U.S.C. 1 et seq.; Sec. 418, Pub. L. 105-391, 112 Stat. 3497 (16 U.S.C. 5966).

Subpart A--Authority, Purpose and Definitions

36 CFR § 52.1

§ 52.1 What does this part cover?

This part covers the issuance and administration of commercial use authorizations. A commercial use authorization authorizes the holder to provide specific commercial services to visitors to a park area in certain circumstances and under specified terms and conditions. Commercial use authorizations may authorize commercial services in park areas that are similar to or the same as some types of services authorized by concession contracts issued by the Director under 36 CFR part 51. The Director at any time may choose to issue a concession contract in accordance with 36 CFR part 51 to authorize the conduct of commercial services even though the proposed services may be subject to authorization under a commercial use authorization. The Director may only ***70902** issue commercial use authorizations under the terms and conditions of this part. There are two types of commercial use authorizations, incidental activity commercial use authorizations and in-park commercial use authorizations.

36 CFR § 52.2

§ 52.2 Are commercial bus tour permits covered by this part?

No. The Director administers commercial bus tour permits under separate regulations and guidelines.

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36 CFR § 52.3

§ 52.3 How are certain terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part.

Commercial bus tour means a type of commercial service provided to park area visitors where passengers are conveyed into and/or out of a park area by motor vehicle for a direct or indirect fee or charge and no other services (except for on-board interpretation) are provided.

Commercial bus tour permit means a form of written authorization issued for the conduct of commercial bus tours in park areas.

Commercial use authorization means a form of written authorization issued by the Director to a person. The authorization authorizes the holder to provide specific commercial services to park area visitors in certain circumstances and under specified terms and conditions. Except as otherwise indicated the term "commercial use authorization" as used in this part collectively refers to incidental activity commercial use authorizations and in-park commercial use authorizations.

Gross receipts means the total amount of revenue received by a holder, in cash, credit, or barter or any other form of compensation, from persons patronizing a holder's services.

Holder means a person to whom a commercial use authorization has been issued.

Incidental activity commercial use authorization means a commercial use authorization that authorizes the holder to provide specified commercial services to visitors to a park area when the services originate and terminate outside of park area boundaries.

In-park commercial use authorization means a commercial use authorization (issued only if projected annual gross receipts under the authorization are less than $25,000) that authorizes the holder to provide specified commercial services to visitors of a park area that originate and are provided solely within the boundaries of a park area.

Non-profit organization means an entity that has been determined by the Internal Revenue Service to be exempt from federal income taxation as a non-profit or not-for-profit organization under the terms of the Internal Revenue Code.

Taxable income means income that is subject to federal income tax under the terms of the Internal Revenue Code.

Use limits means limits the Director may impose on a holder's access to park area lands or limits on a holder's park area entries and/visitor levels.

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Visitor use allocations means allocations of a specified portion of a park area entrance, user days, or similar visitor use allowances that are required in order to implement park area visitor use limitations.

Subpart B--Issuance of Commercial Use Authorizations.

36 CFR § 52.4

§ 52.4 What general conditions apply to the issuance of commercial use authorizations?

Both types of commercial use authorizations (incidental activity commercial use authorizations and in-park commercial use authorizations) may be issued only to authorize the provision of commercial services to park area visitors that the Director determines are appropriate to the applicable park area. In addition, a commercial use authorization may be issued only if the Director determines that the authorization and the services authorized by the authorization: (1) Will have minimal impact on the park area's resources and values; (2) are consistent with the purposes for which the park area was established; (3) are consistent with all applicable park area management plans, policies and regulations; and (4) meet all other requirements of this part. The Director must require that provision of services under a commercial use authorization are accomplished in a manner that is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the applicable park area.

36 CFR § 52.5

§ 52.5 What are examples of an incidental activity commercial use authorization?

An incidental activity commercial use authorization authorizes the holder to enter a park area to provide commercial services to visitors if those services originate and terminate outside of the park area's boundaries. The authorization does not authorize solicitation of customers, sales, payment or other direct commercial activity within a park area. An example of the type of services authorized by an incidental activity commercial use authorization is a guided horseback trail ride operation based outside of a park area that guides visitors into and out of a park area on a trail ride. In this example, all solicitation of customers, sales, and payment for the services must occur outside of park area boundaries. Incidental activity commercial use authorizations must contain appropriate provisions limiting the conduct of services by the holder in a manner consistent with the limitations set forth in this part. The Director may issue a single incidental activity commercial use authorization allowing commercial services to visitors in more than one area of the park if all other applicable requirements of this part are met.

36 CFR § 52.6

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§ 52.6 What are examples of an in-park commercial use authorization?

An in-park commercial use authorization authorizes the holder to provide specified commercial services to visitors (issued only if projected gross receipts under the authorization are less than $25,000) that originate and are provided solely within the boundaries of the park area. For example, the Director may issue an in-park commercial use authorization to a firewood sales operator who enters a park area campground to sell firewood to visitors. For another example, the Director may issue an in-park commercial use authorization to a person selling crafts in a park area on a one time or occasional basis. In both examples, the authorization may not be issued unless the Director projects that the holder's annual gross receipts from the services is less than $25,000. If the Director projects that the annual gross receipts are expected to exceed $25,000, an in-park commercial use authorization may not authorize the services. In that instance a concessions contract or other applicable authorization must be issued. In-park commercial use authorizations must contain appropriate provisions limiting the holder's provision of services in a manner consistent with the limitations of this part.

36 CFR § 52.7

§ 52.7 Is a non-profit organization required to obtain a commercial use authorization in order to provide services to visitors in a park area?

Unless a non-profit organization holds a concession contract or is otherwise authorized to conduct visitor-related commercial activities in a park area, a non-profit organization is required to obtain a commercial use authorization in order to conduct visitor-related commercial activities in a park area if the non-profit organization derives taxable income from the conduct of the activities. If a non-profit organization ***70903** demonstrates to the satisfaction of the Director that it derives no taxable income from the provision of the services or if all income derived is exempt from taxation under the terms of the Internal Revenue Code, the non-profit organization will not be required to obtain a commercial use authorization in order to conduct the activity. However, the activities of a non-profit organization in a park area are subject to similar oversight and control through a Special Park Use Permit and issued according to the provisions of Director's Order 53 and Reference Manual 53 (DO-53/RM-53). The Special Park Use Permit shall include appropriate terms, conditions, and requirements, including without limitation insurance requirements and fees adopted by the Director under separate legal authority.

36 CFR § 52.8

§ 52.8 When must the Director limit the number of Special Park Use Permits to be issued for a park area?

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The Director must limit the number of Special Park Use Permits issued for a park area, including those issued to non-profit organizations, if the Director determines that issuing an unlimited number of such permits is inconsistent with the preservation and proper management of the resources and values of the park area or is inconsistent with the provisions of DO-53/RM-53.

Subpart C--Issuance of Commercial Use Authorizations.

36 CFR § 52.9

§ 52.9 Who may be issued a commercial use authorization?

Any person may request the Director to issue a commercial use authorization in accordance with this part and if the Director issues a commercial use authorization, the Director upon request must issue a similar commercial use authorization to all qualified persons, subject to section 51.12 of this part. No one is entitled to issuance of a commercial use authorization. Issuance of a commercial use authorization is in the discretion of the Director.

36 CFR § 52.10

§ 52.10 How does a person request the issuance of a commercial use authorization?

To request issuance of a commercial use authorization, a person must submit a written request. The written request must be mailed or delivered to the Director (to the attention of the Superintendent of the applicable park).

36 CFR § 52.11

§ 52.11 What happens after a written request for issuance of a commercial use authorization is made?

If the Director determines, in accordance with section 52.4 of this part, that it is not appropriate to issue a commercial use authorization for the specified commercial services, the Director will so advise the requester in writing. If the Director determines, in accordance with section 52.4 of this part, that it appears to be appropriate to issue a commercial use authorization for the specified services under this part, and the Director considers under this part that there is no need to limit the number of commercial use authorizations for the specified services, the Director will seek additional information to support completing the CUA form. The Director will then send the requester a proposed commercial use authorization with conditions. A signed copy of the proposed commercial use authorization, and, where required, a non-refundable application fee payment, must be submitted to the applicable park area. Upon receipt of this submission, the Director will make a final decision as to whether to issue a commercial use authorization for the specified commercial services in accordance with this part and as to whether the applicant is qualified to provide the services.

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36 CFR § 52.12

§ 52.12 When must the Director limit the number of commercial use authorizations to be issued?

The Director must limit the number of commercial use authorizations issued for a particular type of commercial services if the Director determines that issuing an unlimited number of such commercial use authorizations is inconsistent with the preservation and proper management of the resources and values of the park area. The Director must also limit the number of commercial use authorizations issued for a park area if the Director determines in accordance with section 52.14 of this part to establish visitor use limits and that continuation of issuance of an unlimited number of commercial use authorizations makes infeasible a fair and equitable distribution of visitor use allocations.

36 CFR § 52.13

§ 52.13 What happens if the Director determines to limit the number of commercial use authorizations or Special Park Use Permits to be issued?

If the Director determines to limit the number of commercial use authorizations to be issued for a particular type of commercial services, the issuance of the available commercial use authorizations must be accomplished by the Director by random selection under which all qualified applicants have an equal opportunity to obtain an authorization. Special Park Use Permit applicants, including non-profit organization applicants, would have similar limitations placed on the number of permits issued based on criteria outlined in DO-53/RM-53. An incumbent holder will have no right or any form of preference to issuance of a subsequent commercial use authorization or Special Park Use Permit.

36 CFR § 52.14

§ 52.14 When will the Director establish visitor use limits?

The Director will establish visitor use limits if the Director determines that the limits are appropriate to protect park area visitors or resources. If visitor use limits are established, authorized visitor use will be allocated by the Director among all holders of commercial use authorizations and Special Park Use Permits in a fair and equitable manner. Incumbent holders have no right of preference for visitor use allocations. If it is not feasible to fairly and equitably allocate limited visitor use among all holders, the Director must limit the number of commercial use authorizations to be issued in accordance with this part.

36 CFR § 52.15

§ 52.15 What special responsibilities does the Director have if only a limited

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number of commercial use authorizations are issued or if the Director establishes visitor use limits?

If the Director limits the number of commercial use authorizations issued for a park area with respect to a particular type of commercial services, and/or, if the Director establishes visitor use limits under this part, the Director must take appropriate measures to assure that all holders provide quality services to visitors at rates and charges that are reasonable and appropriate. Unless otherwise provided in the contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant to the Director: length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, and type of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services after taking into account the factors referred to in the preceding sentence. ***70904**

36 CFR § 52.16

§ 52.16 What fees must the Director charge in connection with a commercial use authorization?

The Director must charge a reasonable fee for a commercial use authorization, in addition to any application fee. The fee must at least be sufficient to recover the Director's costs associated with management and administration of the holder's activities under the authorization. The fee may also include the costs for the maintenance and repair of park area resources impacted by the holder's activities. If a holder is assigned the use of improvements within a park area, the fee must also include the fair value of the use of the assigned improvements.

36 CFR § 52.17

§ 52.17 How will the Director expend fees received from holders?

All fees paid to the Director pursuant to commercial use authorizations shall be expended in the park area where collected to pay for management and administrative costs associated with commercial use authorizations and for other park area activities.

Subpart D--Terms and Conditions of Commercial Use Authorizations

36 CFR § 52.18

§ 52.18 What is the term of a commercial use authorization?

A commercial use authorization must have a term of two years or less.

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36 CFR § 52.19

§ 52.19 May a commercial use authorization be transferred?

No. A commercial use authorization is not transferable. All commercial use authorizations must contain provisions prohibiting their sale or transfer.

36 CFR § 52.20

§ 52.20 May a commercial use authorization provide an exclusive right to provide commercial services in a park area?

No. Commercial use authorizations may only authorize a non-exclusive right to provide commercial services in a park area.

36 CFR § 52.21

§ 52.21 May a commercial use authorization permit the construction of structures, fixtures, or improvements on lands located within the boundaries of a park area?

No. A commercial use authorization may not authorize the construction of structures, fixtures or improvements on lands located within the boundaries of a park area. A commercial use authorization may assign a holder use of existing structures, fixtures or improvements when necessary to assist in providing services to visitors. An incumbent holder shall have no right or any form of preference to the continuing utilization of assigned structures, fixtures or improvements under the terms of a subsequent commercial use authorization.

36 CFR § 52.22

§ 52.22 May the Director terminate a commercial use authorization?

Yes. A commercial use authorization must contain appropriate provisions allowing the Director to terminate the authorization without liability at any time at the discretion of the Director.

36 CFR § 52.23

§ 52.23 What reporting requirements must a commercial use authorization contain?

Commercial use authorizations must contain appropriate provisions requiring the permittee to provide the Director annually a statement of its gross receipts for the prior year's activities and any specific information related to the commercial use that the Director may request, including but not limited to, visitor use statistics and resource impact assessments. If a commercial use authorization authorizes the conduct of commercial services in more than one park area, gross receipts and other requested information and reports must be provided on an individual park

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area basis.

36 CFR § 52.24

§ 52.24 May incumbent holders obtain rights or a preference to the issuance of subsequent visitor use authorizations or to particular visitor use allocations?

No. A commercial use authorization will not grant the holder a right or preferences of any form to the issuance of subsequent commercial use authorizations or to particular visitor use allocations.

36 CFR § 52.25

§ 52.25 What records must a holder maintain and what access does the Director have to these records?

A commercial use authorization must contain appropriate provisions requiring the holder to maintain normal accounting books and records and granting the Director and the General Accounting Office access to such books and records at any time for the purpose of determining compliance with the terms of a commercial use service authorization and this part.

36 CFR § 52.26

§ 52.26 What other terms and conditions may or must a commercial use authorization contain?

Commercial use authorizations must contain such provisions as are otherwise required by law and must contain such provisions as the Director determines are necessary and appropriate (1) to protect park area visitors; (2) to assure that holders provide appropriate services to visitors; and (3) to protect and properly manage the resources and values of the park area. Commercial use authorizations must also contain appropriate provisions strictly limiting the holder's conduct of services to the services specified in the authorization issued.

Dated: November 13, 2002.

Paul Hoffman,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 02-29783 Filed 11-26-02; 8:45 am]

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# DOGS AND HORSES – HOW TO PLAY NICE TOGETHER

Here are some frequently-asked questions about the interaction of dogs and horses. We've posted these so that dogs and horses can enjoy Fort Funston together in safety.

### *Why is a large animal like a horse afraid of a much smaller dog?*

Biologically, horses are prey animals. They perceive any meat-eating animal as a potential threat.

### *What happens when a horse is afraid?*

The horse's first instinct is to run away. But when the rider prevents that, the horse is forced to try to defend itself or fight to escape. A dog that barks, chases or circles a horse may cause the horse to:

- strike (kick out) with its front hooves
- kick with one or both back hooves (a kick to the head is potentially fatal to any dog)
- trample the dog
- rear (stand on its hind legs and potentially fall on the rider)
- buck off the rider so that the horse can run away

### *Will a horse perceive a friendly, curious dog to be a threat?*

- Young horses or those that are not familiar with an urban environment are more likely to perceive a dog as threatening.
- If a horse has had bad experiences with dogs or just has not been around enough dogs, it may be fearful of any dog regardless of how friendly and calm the dog.
- If an unfamiliar dog approaches in an overly exuberant manner, any horse may also see this as a potential threat.

### *What should you do when encountering horses?*

- Have the dog admire the horse from afar (especially far from the horse's rear end).
- Avoid throwing toys and sticks toward or close to a horse. Fast moving objects (and dogs chasing them) in a horse's peripheral vision can startle the horse.

### *What if a dog is kicked or a horse is bitten or a rider falls off or is hurt?*

- Like any other accident resulting in an injury, the participants need to exchange their contact information right there on the spot.
- If an injury is significant, the ranger should be called immediately. The number is **(415) 561-5656** and every dog walker and rider should have it programmed into his or her cell phone.

*Can a friendly dog and a friendly horse get extra friendly if the owners agree?*

- Assuming the dog is at the front end of the horse, being in close proximity (if the respective owners are okay with it) is fine, but we would advise against any nose to nose contact. Sometimes once they are nose to nose they realize that they are scared and then they suddenly react defensively.
- It is helpful for dogs to get used to a horse's scent, so if the horse rider offers, you can pet the horse's neck and let the dog smell your hand. Most dogs find the scent quite interesting, and it may create a positive association.

*What if my dog has never seen horses before?*

- Keep your dog on leash until you can be confident your dog's reaction is temperate. If he starts to show interest in the horse—pulling, barking, etc... try to get him focused on you using a treat or a toy or something else he likes. If needed, move away from the horse.
- In general, if you elect to have your dog off leash when a horse is passing by you should move off the path well before the horse reaches your location and have your dog sit or lie down next to you. That way the horse and rider can be assured that your dog is well-behaved and safe to pass by.
- Keep an eye up the beach or trail so you have time to react.
- Let the horse get a good distance before releasing your dog to play.

*If my dog unexpectedly gets aggressive with a horse, what should I do?*

- Keep your voice firm but calm so that your dog and the horse are not overly agitated (or use a happy encouraging voice as this may help your dog).
- Try to let the rider know that you are collecting the dog and will do so as quickly as possible. Try to keep a friendly tone – the animals sense it.
- Rather than chase your dog around the horse and risk getting kicked yourself, try to stand a few feet back and when the dog circles around and least expects it, grab him or her by the collar and put the leash on.
- If necessary, ask another beachgoer to help you round up your dog.

*As a horse rider, how can I help a dog that is unfamiliar with horses or overly-excited by them?*

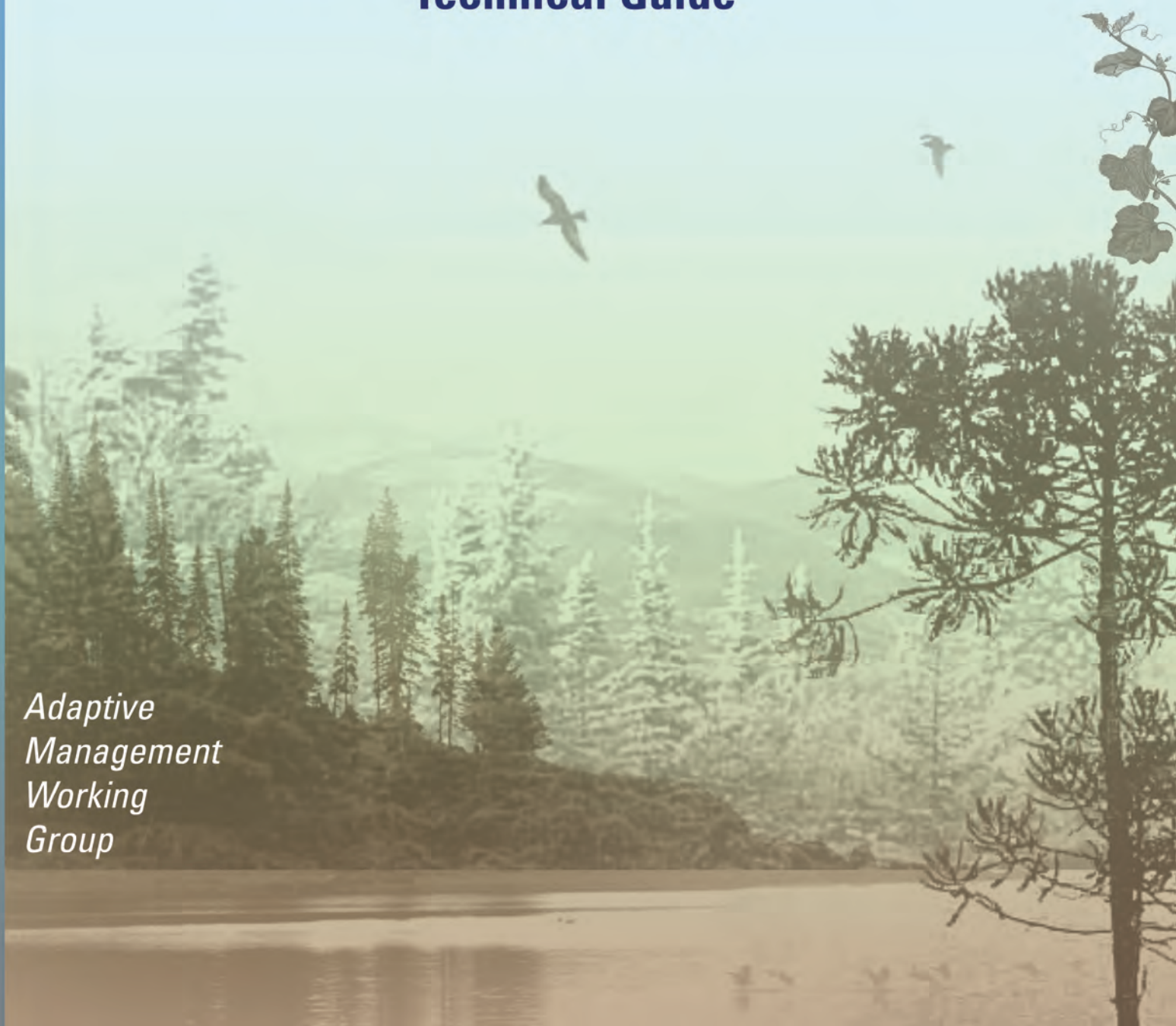
- Riders can keep the horse calm by remaining relaxed themselves and helping to direct the horse to remain focused on the rider's cues rather than on the dog.
- Keep the horse standing stationary or at a walk since running or pacing will excite the dog more.

*What can I do to enhance everyone's safety if I am riding in an area where there are many dogs around my horse?*

- It is important to "know your horse", what their capabilities are and not push too aggressively past a horses limitations.
- Equestrians should also assess situations and use common sense when using multi use areas.
- It is also important to know your own skill level as a rider to deal with a situation, should it arise.
- Proactively, and politely, ask owners of exuberant dogs to leash the dogs, or have the dogs sit or stand by the owner's side so the horse can pass.
- Stay calm, as nervousness on the rider's part will be transferred to the horse.

# Adaptive Management

## The U.S. Department of the Interior Technical Guide



*Adaptive Management Working Group*

# Adaptive Management

## The U.S. Department of the Interior Technical Guide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# Preface

The Department of the Interior (DOI) Adaptive Management Working Group (AMWG) sponsored the development of this technical guide to clearly and consistently define adaptive management and describe conditions for its implementation. AMWG membership includes representatives from across DOI's bureaus and offices.

A writing team of resource managers, technical experts, and other specialists worked with AMWG to address four basic questions concerning adaptive management: (1) What is adaptive management? (2) When should it be used? (3) How should it be implemented? (4) How can its success be recognized and measured? These questions were used to organize both the writing effort and the structure of the guide itself, with individual chapters addressing each of the questions.

The authors sought to describe adaptive management at an appropriate level of technical detail, while remaining focused on its definition, operational components, and conditions in which it applies. A key challenge was to provide sufficient detail for clarification, while limiting the length and complexity of the document.

The authors gratefully acknowledge the efforts by the many people who participated in developing this guide, including Maryanne Bach, Donna Brewer, Tara Conrad, John Dennis, Mike Ferguson, Larry Finfer, Gary Fraser, Ken Havran, Jacob Hoogland, Rick Lemon, Kim Magraw, Chris Pease, Steve Tyson, Ben Tuggle, John Vitello, Suzanne Weedman, and Tom Weimer. The authors also thank the people who provided valuable comments as reviewers, including Charles Baxter, Robert Fisher, Scott Florence, Clint Moore, Roger Sayre, and Brent Uilenberg.

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# Problem-Scoping Key for Adaptive Management

The following key can help in dissecting a particular management problem and determining whether adaptive management is an appropriate approach to decision making. If the answer to any question in the key is negative, then an approach other than adaptive management is likely to be more appropriate.

1. Is some kind of management decision to be made?
   (see Sections 1.1, 2.1, 2.3, 3.1, and 5.5)
   No – decision analysis and monitoring are unnecessary when no decision options exist.
   Yes – go to step 2.

2. Can stakeholders be engaged?
   (see Sections 1.1, 1.2, 2.1, 3.1, and 4.2)
   No – without active stakeholder involvement an adaptive management process is unlikely to be effective.
   Yes – go to step 3.

3. Can management objective(s) be stated explicitly?
   (see Sections 1.2, 2.1, 2.2, 2.3, 3.1, 4.2 and 5.1)
   No – adaptive management is not possible if objectives are not identified.
   Yes – go to step 4.



4. Is decision making confounded by uncertainty about potential management impacts?
   (see Sections 1.1, 1.2, 2.1, 3.1, 4.1, 4.2 and 5.2)
   No – in the absence of uncertainty adaptive management is not needed.
   Yes – go to step 5.

5. Can resource relationships and management impacts be represented in models?
   (see Sections 1.2, 3.1, 4.2, and 5.1)
   No – adaptive management cannot proceed without the predictions generated by models.
   Yes – go to step 6.

6. Can monitoring be designed to inform decision making?
   (see Sections 2.1, 2.3, 3.1, and 4.2)
   No – in the absence of targeted monitoring it is not possible to reduce uncertainty and improve management.
   Yes – go to step 7.

7. Can progress be measured in achieving management objectives?
   (see Sections 1.1, 3.1, 4.1, and 4.2)
   No – adaptive management is not feasible if progress in understanding and improving management is unrecognizable.
   Yes – go to step 8.

8. Can management actions be adjusted in response to what has been learned?
   (see Sections 1.2, 2.1, 3.1, 4.1, 4.2, 5.3, and 5.4)
   No – adaptive management is not possible without the flexibility to adjust management strategies.
   Yes – go to step 9.

9. Does the whole process fit within the appropriate legal framework?
   (see Sections 2.3, 2.4, 3.2, 4.1, and 4.2)
   No – adaptive management should not proceed absent full compliance with the relevant laws, regulations, and authorities.
   Yes – all of the basic conditions are met, and adaptive management is appropriate for this problem.

# Executive Summary

The purpose of this technical guide is to present an operational definition of adaptive management, identify the conditions in which adaptive management should be considered, and describe the process of using adaptive management for managing natural resources. The guide is not an exhaustive discussion of adaptive management, nor does it include detailed specifications for individual projects. However, it should aid U.S. Department of the Interior (DOI) managers and practitioners in determining when and how to apply adaptive management.

Adaptive management is framed within the context of structured decision making, with an emphasis on uncertainty about resource responses to management actions and the value of reducing that uncertainty to improve management. Though learning plays a key role in adaptive management, it is seen here as a means to an end, namely good management, and not an end in itself. The operational definition used in the guide is adopted from the National Research Council, which characterizes adaptive management as an iterative learning process producing improved understanding and improved management over time:

> Adaptive management [is a decision process that] promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Careful monitoring of these outcomes both advances scientific understanding and helps adjust policies or operations as part of an iterative learning process. Adaptive management also recognizes the importance of natural variability in contributing to ecological resilience and productivity. It is not a 'trial and error' process, but rather emphasizes learning while doing. Adaptive management does not represent an end in itself, but rather a means to more effective decisions and enhanced benefits. Its true measure is in how well it helps meet environmental, social, and economic goals, increases scientific knowledge, and reduces tensions among stakeholders.

Adaptive management as defined here involves ongoing, real-time learning and knowledge creation, both in a substantive sense and in terms of the adaptive process itself. It is described in what follows in a series of 9 steps, as summarized in section 4.1, involving stakeholder involvement, management objectives, management alternatives, predictive models, monitoring plans, decision making, monitoring responses to management, assessment, and adjustment to management actions. An adaptive approach actively engages stakeholders in all phases of a project over its timeframe, facilitating mutual learning and reinforcing the commitment to learning-based management. Adaptive management in DOI is implemented within a legal context that includes statutory authorities such as the National Environmental Policy Act (NEPA), the Endangered Species Act, and the Federal Advisory Committee Act.

For many important problems now facing the resource management community, adaptive management holds great promise in reducing the uncertainties that limit the effective management of natural resource systems. For many conservation and management problems, utilizing management itself in an experimental context may be the only feasible way to gain the system understanding needed to improve management.

Though it is commonly thought that an adaptive approach can produce results quickly at low cost, the opposite is more likely to be true. An initial investment of time and effort will increase the likelihood of better decision making and resource stewardship in the future, but patience, flexibility, and support are needed over the life of an adaptive management project. For these reasons it is important to carefully consider the potential use of an adaptive approach, and to engage in careful planning and evaluation when adaptive management is used.

# Chapter 1: What is Adaptive Management?

1

Adaptive management is a systematic approach for improving resource management by learning from management outcomes (1). Its origin can be traced back to ideas of scientific management pioneered by Frederick Taylor in the early 1900s (2,3). Various perspectives on adaptive management are rooted in parallel concepts found in business (total quality management and learning organizations [4]), experimental science (hypothesis testing [5]), systems theory (feedback control [6]), and industrial ecology (7). The concept has attracted attention as a means of linking learning with policy and implementation (8,9). Although the idea of learning from experience and modifying subsequent behavior in light of that experience has long been reported in the literature, the specific idea of adaptive management as a strategy for natural resource management can be traced to the seminal work of Holling (10), Walters (11), and Lee (12).

Adaptive management as described here is infrequently implemented, even though many resource planning documents call for it and numerous resource managers refer to it (13). It is thought by many that merely by monitoring activities and occasionally changing them, one is doing adaptive management. Contrary to this commonly held belief, adaptive management is much more than simply tracking and changing management direction in the face of failed policies, and, in fact, such a tactic could actually be maladaptive (14). An adaptive approach involves exploring alternative ways to meet management objectives, predicting the outcomes of alternatives based on the current state of knowledge, implementing one or more of these alternatives, monitoring to learn about the impacts of management actions, and then using the results to update knowledge and adjust management actions (15). Adaptive management focuses on learning and adapting, through partnerships of managers, scientists, and other stakeholders who learn together how to create and maintain sustainable resource systems (3).

The purpose of this technical guide is to present an operational definition of adaptive management, identify the conditions in which adaptive management should be considered, and describe the process of using adaptive management for managing natural resources. The guide is not an exhaustive discussion of adaptive management, nor does it include detailed specifications for individual projects. However, it should aid both U.S. Department of Interior (DOI) managers and practitioners in determining when and how to apply adaptive management.

*Examples of decision making in natural resource management include the control of water releases from a dam, direct manipulation of plant or animal populations through harvesting, stocking, or transplanting, and manipulations of ecosystems through chemical or physical changes to habitats.*

## 1.1. Decision Making and Natural Resource Management

A context for resource management involves a decision making environment characterized by multiple (often competing) management objectives, constrained management authorities and capabilities, dynamic ecological and physical systems, and uncertain responses to management actions. Management thus involves not only predicting how ecological or physical systems are likely to respond to interventions, but also identifying what management options are available, what outcomes are desired, how much risk can be tolerated, and how best to choose among a set of alternative actions. The challenge confronting managers is to make "good" decisions in this complex environment, recognizing that the quality of decision making in the face of uncertainty should be judged by the decision making process as well as progress towards desired outcomes.

A common problem in natural resources management involves a temporal sequence of decisions, in which the best action at each decision point depends on the state of the managed system. Because management actions at each point in time can influence change in the resource system from that time forward, the goal of management is to prescribe objective-driven strategies that account for both the current and future impacts of decisions. A key issue is how best to choose management actions, recognizing that the most appropriate management strategy is obscured by limited understanding.

Often the uncertainty about management impacts is expressed as disagreements among stakeholders who have differing views about the direction and magnitude of resource change in response to management. An adaptive approach explicitly articulates these viewpoints, incorporates them into the decision making process, and uses management itself to help identify the most appropriate view about resource dynamics. In this way, understanding of the resource can be enhanced over time, and management can be improved.

Examples of this kind of decision problem include the control of water releases from a dam, direct manipulation of plant or animal populations through harvesting, stocking, or transplanting, and manipulations of ecosystems through chemical or physical changes to habitats.

The following management issues exemplify sequential decision making in natural resources in the face of uncertainty:

- In a newly established meta-population of wolves, how many animals (if any) should be relocated periodically to maximize the probability that the meta-population will persist over the long term?

- What amount and timing of water release from a dam will maintain downstream water quality, water quantity, and living resources, including people and communities?

- How can an area be managed to minimize the impacts of recreational use on flora and fauna?

- When and how much should water levels be raised or lowered in an impoundment to maximize abundance and availability of invertebrates for foraging shorebirds?

- How can plant communities in an area be managed so as to protect and sustain archeological resources in the area at minimum cost?

- How much forest should be cut each year as part of a pine regeneration program to maximize old-growth pine for use by red-cockaded woodpeckers?

- How can fuel loads be decreased while minimizing effects on forested ecosystems?

- Should annual hunting-season regulations be restrictive or moderate to maximize the longterm cumulative harvest of mallards?

- How much and how often should herbicide be applied to minimize the proliferation of the invasive plant hydrilla in a group of southern lakes?

- In what order should patches of isolated bull trout habitat be reconnected in a network of tributaries to maximize the probability of population persistence while minimizing costs?

- When and where should prescribed burns be used in a collection of management units to maximize the probability that Florida scrub-jays will persist at a refuge over the long term?

Management of problems like these increasingly involves a systems approach with explicit and agreed-upon objectives, management alternatives, and analytical approaches that can identify the most appropriate management strategies. Adaptive management exemplifies such an approach; however, its focus is not only on making good decisions in the present, but also on gaining experience and knowledge so that future management decisions can be improved.

### *Adaptive management as an example of structured decision making*

The move toward accountability and explicitness in natural resource management has led to a growing need for a more structured approach to decision making. Improved clarity about key elements in a decision making process can help decision makers focus attention on what, why, and how actions will be taken. Activities in a structured approach to decision making include the following:

- Engaging the relevant stakeholders in the decision making process
- Identifying the problem to be addressed
- Specifying objectives and tradeoffs that capture the values of stakeholders
- Identifying the range of decision alternatives from which actions are to be selected
- Specifying assumptions about resource structures and functions
- Projecting the consequences of alternative actions
- Identifying key uncertainties
- Measuring risk tolerance for potential consequences of decisions
- Accounting for future impacts of present decisions
- Accounting for legal guidelines and constraints

In the ensuing chapters it will be clear that adaptive management is itself a structured approach to decision making, in that it includes the key elements listed above. The distinguishing features of adaptive management are its emphasis on sequential decision making in the face of uncertainty and the opportunity for improved management as learning about system processes accumulates over time.

### *Embracing uncertainty*

Making a sequence of good management decisions is more difficult in the presence of uncertainty, an inherent and pervasive feature of managing ecological systems (16,17). Uncertainties arise with incomplete control of management actions, errors in measurement and sampling variation, environmental variability, and an incomplete understanding of system dynamics (see Section 5.2). These uncertainties potentially degrade management performance and contribute to acrimony in the decision making process.

Perhaps not surprisingly, managers have sometimes been reluctant to acknowledge uncertainty in environmental assessments and management strategies (18). Often there is a perception that asserting certainty as to management impacts is more convincing, and acknowledging uncertainty increases the likelihood that recommended actions will be ignored. Acknowledgement of uncertain management outcomes is sometimes seen as an invitation for confrontation among different interest groups, resulting in an inability to reach timely agreement on a proposed action.

Adaptive management forces stakeholders to confront unresolved uncertainties that can significantly influence management performance. An adaptive approach provides a framework for making good decisions in the face of critical uncertainties, and a formal process for reducing uncertainties so that management performance can be improved over time.

### 1.1 Key Points

- Resource management involves decision making in an environment of multiple management objectives, constrained management authorities and capabilities, dynamic resource systems, and uncertain responses to management actions.
- Resource management increasingly involves the articulation of objectives and management options and the use of analytical techniques to identify optimal management strategies.
- Adaptive management is a structured approach to decision making that emphasizes accountability and explicitness in decision making.
- Adaptive management is useful when there is substantial uncertainty regarding the most appropriate strategy for managing natural resources.

## 1.2. Operational Definition of Adaptive Management

For the U.S. Department of the Interior to effectively implement adaptive management in a consistent and coherent manner across all bureaus, an operational definition is needed that will be applicable for all of DOI. The definition used in this technical guide is adopted from the National Research Council (19):

> Adaptive management [is a decision process that] promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Careful monitoring of these outcomes both advances scientific understanding and helps adjust policies or operations as part of an iterative learning process. Adaptive management also recognizes the importance of natural var ability in contributing to ecological resilience and productivity. It is not a 'trial and error' process, but rather emphasizes learning while doing. Adaptive management does not represent an end in itself, but rather a means to more effective decisions and enhanced benefits. Its true measure is in how well it helps meet environmental, social, and economic goals, increases scientific knowledge, and reduces tensions among stakeholders.

This definition gives special emphasis to uncertainty about management impacts, iterative learning to reduce uncertainty, and improved management as a result of learning. Key points in the definition are discussed in more detail below:

***Adaptive management openly acknowledges uncertainty about how ecological systems function and how they respond to management actions*** (20,21). However, adaptive management is not a random trial-and-error process. Instead, it involves formulating the resource problem, developing conceptual models based on specific assumptions about the structure and function of the resource system, and identifying actions that might be used to resolve the problem. Through the monitoring of outcomes following management interventions, adaptive management promotes improved understanding about which actions work, and why.

***Adaptive management is designed to improve understanding of how a system works, so as to achieve management objectives*** (20,21). Models are used in adaptive management to embed hypotheses about system behaviors and enable managers to predict the impacts of their activities. These predictions are the basis for learning later on. Once activities are implemented, the testing of underlying model assumptions against monitoring data provides the foundation for learning and the improvement of management based on what is learned.

***Adaptive management is about taking action pursuant to desired outcomes*** (21). In adaptive management, the outcomes of decisions, assessed through followup monitoring, are compared against explicit predictions of those outcomes (20), with the comparative results fed back into decision making to produce more effective decision making (11,22,23,24). Actual and expected results can differ for many reasons: underlying assumptions are wrong, actions are poorly executed, environmental conditions have changed, monitoring is inadequate, or some combination of these problems. An adaptive approach helps isolate inadequacies in a management application, allowing adjustments to be made and management to be improved.

***Adaptive management requires the participation of stakeholders.*** Stakeholders include people and organizations who use, influence, and have an interest, or "stake," in a given resource (25). Stakeholders should be involved early in the adaptive management cycle, to help assess the problem and design activities to solve it. Stakeholders also can help to implement and monitor those activities, and participate in the evaluation of results. Involvement

of stakeholders from the beginning increases management effectiveness and the likelihood of achieving agreed-upon outcomes (25).

There are many definitions in the literature on adaptive management, but a common theme shared by them all is that adaptive management is a learning-based process (26). The definition used in this guide was chosen because it emphasizes the use of learning to improve management decisions and because it is germane to resource management in DOI.The sequence of activities shown in Fig. 1.1 is often used to characterize adaptive management. Additional structure can be incorporated into this sequence, by recognizing an embedded feedback loop of monitoring, evaluation, and management adjustments that focuses specifically on learning about the impacts of management. Multiple iterations of this loop may occur within each iteration of the overall cycle, accelerating learning about ecological process within the more comprehensive cycle that includes learning about the adaptive process itself (through periodic problem reassessment, design, and implementation). Learning at both levels is discussed in more detail in Section 3.1.

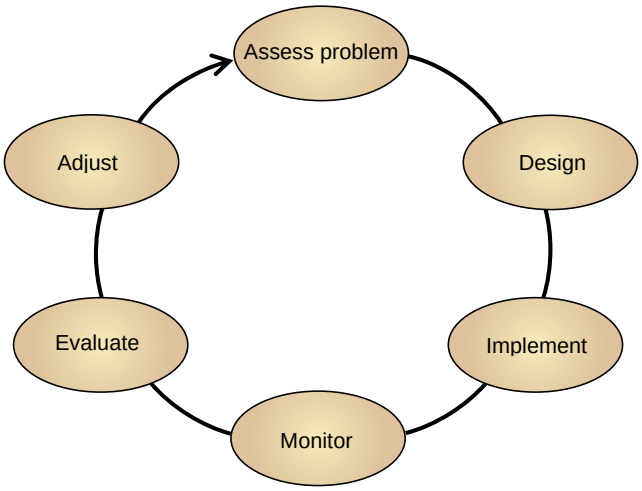



**Figure 1.1.** Diagram of the adaptive management process.

### *Other approaches to resource management*

Learning from the experience of management is certainly not a new idea, but the purposeful and systematic pursuit of knowledge as an explicit part of management has rarely been practiced. The term "adaptive management" has been used to describe a broad array of approaches that involve learning while doing, but the phrase is not always appropriate. For example, management by trial and error is sometimes described as adaptive management, but at best it is likely to be inefficient, and at worst it can retard the institutionalization of experience and learning. Nor should adaptive management be confused with conflict resolution, which focuses on negotiating tradeoffs among competing interests. Management approaches that primarily depend on expert opinion and advice for decision making are not by themselves adaptive. Finally, in the absence of additional structure in a decision making process, monitoring a managed resource system does not itself make an application adaptive. A great many resource systems are monitored in some manner, but in most cases the resulting data are not used systematically for learning and improvement in a context of objective-driven management.

More formal approaches to decision making can be identified, depending on the amount of uncertainty facing managers and the capacity to influence the system being managed (Fig. 1.2). In an ideal situation in which system controllability is high and management impacts are predictable, formal optimal control approaches can be used to identify optimal management strategies. If one's ability to control the system is limited, hedging strategies or scenario planning can be useful, depending on how well the effects of management can be predicted. As indicated in Fig. 1.2, adaptive management is appropriate if management can strongly influence the system but uncertainty about management impacts is high (27).

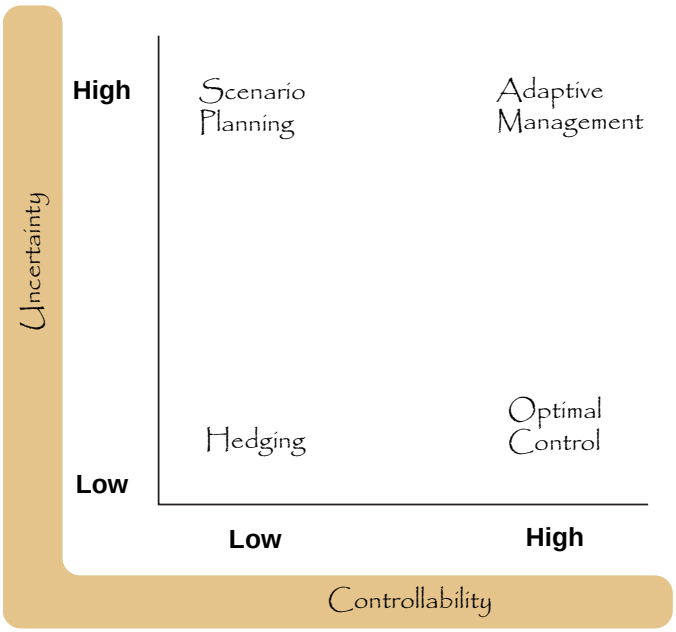



**Figure 1.2.** Approaches to decision making in a natural resource system. The appropriate approach depends on the influence decisions can have on system behavior and the amount of uncertainty about management impacts (27).

Adaptive management requires stated management objectives to guide decisions about what to try, and explicit assumptions about expected outcomes to compare against actual outcomes. It is important to know what the available management options and alternative assumptions are, in case the action that is tried does not work as expected. The linkages among management objectives, learning about the system, and adjusting direction based on what is learned distinguish adaptive management from a simple trial and error process. In the chapters that follow, we describe adaptive management formally in terms of objectives, management options, and models that embed alternative hypotheses about management responses. But in essence, adaptive management will be seen to be learning by doing, and adapting based on what is learned (28). A comparison of adaptive management with some other approaches to natural resource management is presented in Section 5.1.

## 1.2 Key Points

- Adaptive management acknowledges uncertainty about how natural resource systems function and how they respond to management actions.
- Adaptive management is designed to improve understanding of how a resource system works, so as to achieve management objectives.
- Adaptive management makes use of management interventions and followup monitoring to promote understanding and improve subsequent decision making.

*Adaptive management requires stated management objectives to guide decisions about what actions to take, and explicit assumptions about expected outcomes to compare against actual outcomes.*

# Chapter 2: When Should Adaptive Management be Used?

2

In this chapter we describe the conditions under which adaptive management is applicable, and highlight some challenges, limitations, and benefits of an adaptive approach to resource management.

## 2.1. Conditions that Warrant an Adaptive Management Approach

Not all decisions can or should be adaptive. In some cases there is no opportunity to apply learning; in others, there is little uncertainty about what action to choose; and in still others, there is disagreement about objectives. But the concept of adaptive management is so intuitively appealing that the phrase has been applied indiscriminately, with the result that many management applications fail to achieve the improvements expected from adaptive management. In many instances, that failure may have less to do with the approach itself than with the inappropriate contexts within which it is purported to apply (29). An important question is which decision problems are appropriate for the application of adaptive management.

There is a considerable literature that explores reasons why the practice of adaptive management has not lived up to its promise, and extensive documentation of some of the more prominent failures. But only recently has attention focused proactively on those attributes of resource management that make a problem amenable to adaptive management. The following discussion draws from published sources as well as the experiences of management agencies within the Department of the Interior.

There are two key conditions that are mentioned in all thoughtful analyses. First, "there must be a mandate to take action in the face of uncertainty" (12,24). That is, the problem must be important enough to require action of one sort or another. Situations without this imperative can result in either delayed action as more information is acquired or action foregone altogether. Second, there must be the institutional capacity and commitment to undertake and sustain an adaptive program. This condition includes an institutional stability for long-term measurement and evaluation of outcomes, which should allow the early investment in an adaptive approach to pay off in long-term management. Together, these two conditions imply that decision makers must be motivated and patient, that is, they must care about improving management over extended time frames (12).

In addition to these two overarching conditions, six more conditions can be identified directly from the meaning and context of adaptive management, as described in the previous chapter. Adaptive management is warranted when there are consequential decisions to be made, when there is an opportunity to apply learning, when the objectives of management are clear, when the value of reducing uncertainty is high, when uncertainty can be expressed as a set of competing, testable models, and when a monitoring system can be put in place with a reasonable expectation of reducing uncertainty.

### *A real management choice is to be made*

As described in Chapter 1, adaptive management is first and foremost an approach to the management of natural resources and not simply an opportunity to learn. Thus, an application of adaptive management must involve a real choice among management alternatives that affect resource systems. The variability among alternatives must be consequential (i.e., different alternatives produce substantively different management impacts), and the alternatives must be ecologically, economically, politically, and legally feasible.

The genesis of alternatives should be multidisciplinary and participatory. They can arise from within the management agency, from scientists or engineers working for, with, or in opposition to the management agency, from the regulated community, or from other stakeholders. Some decisions are particularly difficult because a suitable range of alternatives cannot be easily identified. In such cases, a collaborative approach in identifying alternative actions is especially useful.

Because natural resource systems operate at multiple spatial and temporal scales and involve interactions among many component systems, the development of alternative actions should account for multiscale responses. One consequence of this complexity is that several pathways may exist to achieve similar outcomes, with alternative pathways differing enough in some relevant aspects (feasibility, cost, public acceptance) to be considered as bona fide alternatives.

The alternatives considered in adaptive management are constrained by existing laws, regulations, and policies, both substantive and procedural. A number of substantive laws govern natural resource decision making (for example, Clean Water Act, Clean Air Act, Endangered Species Act, etc.). Of the procedural laws, the National Environmental Policy Act (NEPA) and its implementing regulations provide considerable guidance about developing and considering alternative management actions. An emerging view discussed in Section 3.2 sees the NEPA process as a powerful and potentially effective way to embody adaptive management (30).

### *There is an opportunity to apply learning*

A condition of adaptive management is that resource management decisions can be revisited and modified over time or that multiple decisions of a similar nature can be made over time. That is, decision making needs to be iterative over time and possibly space; otherwise, learning cannot be applied. Many examples of adaptive management treat a single management unit (for example, a single river or a continental population of ducks) over time, applying the learning derived from earlier actions to decisions made at later times. But equally appropriate are situations where similar management units are each treated only once, and the learning accrued from treatments of some units is used in decisions about how to treat other units at a later time (31).

Besides iterative decision making, several other considerations affect the opportunity to apply learning. First, perhaps obviously, the adaptation of actions must be possible. That is, there must be flexibility in the decision making process to adjust management actions in response to measured outcomes (32). This requires both flexibility in the actions themselves as well as flexibility within the management institutions to adopt the change. Second, management institutions must have the stability to measure outcomes and use the results at later times. Adaptive management sometimes has failed because institutions managing the process dissolved before the learning could be applied (33). Third, it must be possible to acquire understanding quickly enough to apply it to subsequent management decisions. Some ecological processes respond very slowly to management (for example, forest systems). If learning can occur only after observing slow response variables, many iterations of decision making may have passed before the new knowledge can be applied.

Ideally the response to previous management actions can be assessed before a decision about the next management action is made. For example, the response of waterfowl populations to hunting regulations in one year can be assessed in time to inform the setting of hunting regulations in the following year (34). On the other hand,

*Ideally the response to previous management actions can be assessed before a decision about the next management action is made. For example, the response of waterfowl populations to hunting regulations in one year can be assessed in time to inform the setting of hunting regulations in the following year.*

applications of adaptive management in forestry can be limited by the fact that the relevant response variables may not be measurable until decades after a management action is taken (35).

### *Clear and measurable management objectives can be identified*

An adaptive approach requires explicit and measurable objectives. As described in the next three conditions, uncertainty about how to achieve objectives is what motivates adaptive management and drives the design of the monitoring system. To address this uncertainty stakeholders must agree on the objectives. Although an adaptive management framework can serve to structure dialogue among stakeholders, adaptive management itself is not designed to resolve conflicts about management objectives. If the objectives are not clear and measurable, the adaptive framework is undermined.

Objectives need to be measurable for two purposes: first, so progress toward their achievement can be assessed; second, so performance that deviates from objectives may trigger a change in management direction. Explicit articulation of measurable objectives helps to separate adaptive management from trial and error, because the exploration of management options over time is directed and justified by the use of objectives.

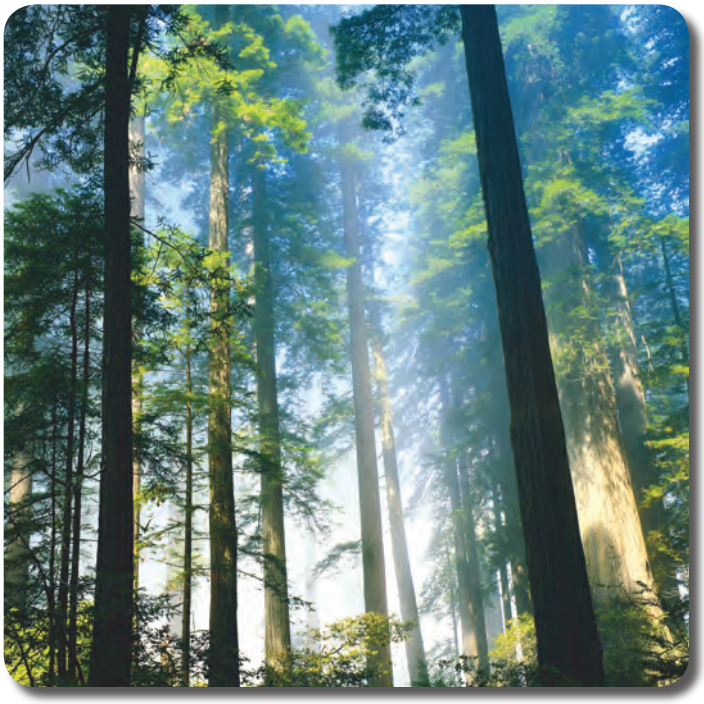
Objectives must be relevant to the project or program to which they apply. An example of a project objective might be to increase biodiversity of amphibians by 25 percent in a local watershed. An example of a program objective is that used by the U.S. Fish and Wildlife Service for adaptive harvest management, namely the maximum long-term harvest of waterfowl consistent with population goals in the North American Waterfowl Management Plan (36, 37). In both cases, the objectives are measurable, relevant to the management problem, and useful for decision making, evaluation, and learning. The nature and use of objectives are discussed in more detail in Section 3.1.

### *The value of information for decision making is high*

The fundamental motivation for adaptive management is that the impact of management actions on resources is uncertain, and the reduction of that uncertainty will accelerate progress in meeting management objectives over time (34). Although uncertainty can be identified in almost any resource management problem, its reduction does not automatically lead to better decision making. An adaptive management application should target learning that will change management actions and improve the ability to achieve management objectives.

The "value of information" refers to how much better the expected performance of a managed system would be if uncertainty were reduced. A high value of information means that the decision maker will potentially choose different alternatives if the system is better understood. With improved understanding comes better decisions, so that success in achieving objectives becomes more likely. The prospect of substantially improved decision making justifies the cost of monitoring and assessment (24) in adaptive management. Conversely, an adaptive approach is not warranted if the value of information is low, essentially because the potential improvement in management does not justify its costs. Sometimes the tradeoffs between costs and benefits can be made explicitly, particularly in applications in which an economic value can be ascribed to learning.

Provided careful thinking, analysis, and modeling are undertaken prior to implementation, one of the advantages of an adaptive approach is that surprises can be anticipated (29). Preparing for the unexpected means fully acknowledging uncertainty, articulating the ways in which assumptions might be wrong, exploring the consequences to management of uncertainty, and having the appropriate monitoring in place to recognize and benefit from unexpected outcomes.



### *Uncertainty can be expressed as a set of testable models*

A formal approach to adaptive management uses the tools of structured decision analysis to inform and analyze the problem. A key step is to predict the effects of management actions that are relevant to the objectives. But predictions require models, whether conceptual or quantitative. Adaptive management utilizes multiple models, each imbedding a particular hypothesis about how the natural resource system responds to management. These models are tested with monitoring data to determine which model best represents system responses. In this way the hypotheses underlying management decisions can be expressed and tested.

Models are critical in an adaptive management process, if only as a means to encourage managers, scientists, and other stakeholders to think carefully about the structure and dynamics of the systems they are managing. When there is contention among stakeholders about how the system will respond to management, modeling forces stakeholders to express these differences as alternative hypotheses, which then can be tested. The models embodying the hypotheses in question also can be used to identify critical monitoring variables to use for comparing hypotheses, and they provide a framework for interpreting monitoring results and evaluating alternative actions to best achieve management objectives.

Models can be qualitative and conceptual, quantitative and highly detailed, or anywhere in between. In all cases, their function in an adaptive management context is to make predictions about how a natural system will respond to management actions and to evaluate the consequences of uncertainty. A common complaint used to justify not undertaking an adaptive program is that the data are sparse and there is too much uncertainty to build models. But this is precisely where adaptive management is most valuable—in expressing and reducing uncertainty. The alternative to building models of system dynamics is to allow the assumptions of decision makers and stakeholders—essentially, the models that exist in the minds of a few individuals—to remain unexpressed and untested.

### *A monitoring system can be established to reduce uncertainty*

Monitoring is fundamental for adaptive management, as a source of data with which to test alternative models and measure progress toward accomplishing management objectives. Simply put, adaptive management is not possible without effective monitoring (see Section 3.1 for a more detailed discussion of monitoring).

There are important details, however, that influence whether a monitoring system will help reduce uncertainty to any useful degree, and these should be considered when evaluating whether to undertake an adaptive program. For example, anticipated effects of alternative actions need to be substantial, because field monitoring can seldom detect subtle differences. Thus, management experiments must be dramatic enough to produce an observable response from the ecosystem, or they will not facilitate learning (32). It is useful here to recall that the statistical power to distinguish among hypotheses is influenced by sample size and the magnitude of treatment effects, and these factors apply as well to an adaptive monitoring system. Poor monitoring precision does more than simply slow the rate of learning; imprecise monitoring can produce misleading evidence that supports inappropriate management. Inaccurate or imprecise monitoring can actually be counterproductive to the goals of management (38).

Learning is accelerated when the principles of experimental design—replication, randomization, and control—are used. Attention to these principles, and their incorporation where possible, will lead to more rapid improvements in management. The amount of temporal and/or spatial replication is an especially important design feature because it determines the

necessary sampling intensity. All other things being equal, management actions that can be replicated many times at different locations will reduce uncertainty more quickly. Replication over time is also valuable (and more common), but typically the sample size is necessarily lower, and information accrues more slowly.

A realistic assessment of the potential for monitoring is a critical condition for adaptive management. This assessment should include not only the power of the monitoring system and the efficiency of its design, but also the institutional resources needed to sustain the monitoring (and analysis of the resulting data) over the time frame required to inform management.

## 2.2. Institutional Context for Adaptive Management

There are a number of factors associated with management problems that can encourage the use of adaptive management. These include not only certain characteristics of the management situation itself, but also the nature and commitments of implementing organizations.

### *Using pre-existing institutional structures*

Certain characteristics of the record of management may help to determine whether adaptive management is appropriate for a particular situation. One is a history of decision making that indicates a willingness to address the risk of unintended and/or undesirable natural resource impacts. Others include previous stakeholder involvement in a collaborative group environment, cost sharing of collaborative efforts, and a demonstrated commitment to evaluation and scientific rigor. The existence of these characteristics prior to the creation of a formal program is a strong indication that adaptive management is potentially useful.

An example of designing around pre-existing conditions is the U.S. Fish and Wildlife Service adaptive harvest management (AHM) program, which was built upon a series of features that were already in place when it was first initiated. Thus, stakeholders were already involved in harvest management, well developed models were available, a decision making process was in place that involved federal, state, and public interests, and extensive, long-term monitoring programs were ongoing (39). AHM was designed from the outset to take advantage of these preadaptations, recognizing that considerable uncertainty still remained about the impacts of harvest regulations.

### *Commitment of executive leadership*

Adaptive management involves an ongoing commitment of leadership and support. Soon after the initiation of an adaptive management project, executive leadership may anticipate a reduction or elimination of stakeholder conflict, a rapid reduction in the amount of scientific investigation that is needed, and early declines in funding needs. But adaptive management activities require management involvement and funding throughout the life of the project, not just at its inception.

From a financial perspective, long-term funding highlights the commitment of implementing organizations to adaptive decision making, and it promotes the planning and implementation of the monitoring and evaluation needed for adaptive management. Conversely, a lack of long-term support limits progress in reducing uncertainty.

The support required for an adaptive approach may include not only funding for monitoring and evaluation, but also an investment in more inclusive and robust decision making processes. It is essential that executive leadership be aware of uncertain outcomes and be prepared to make the necessary changes as adaptive management progresses through implementation.

Finally, executive leadership is needed to support an institutional culture and the organizational arrangements that will acknowledge uncertainty and promote learning. Adaptive management flourishes in a learning organization that encourages experimentation, rewards risk taking, and embraces the lessons learned from experimentation. To successfully employ an adaptive approach in management, a philosophical shift from “expert” to collaborative

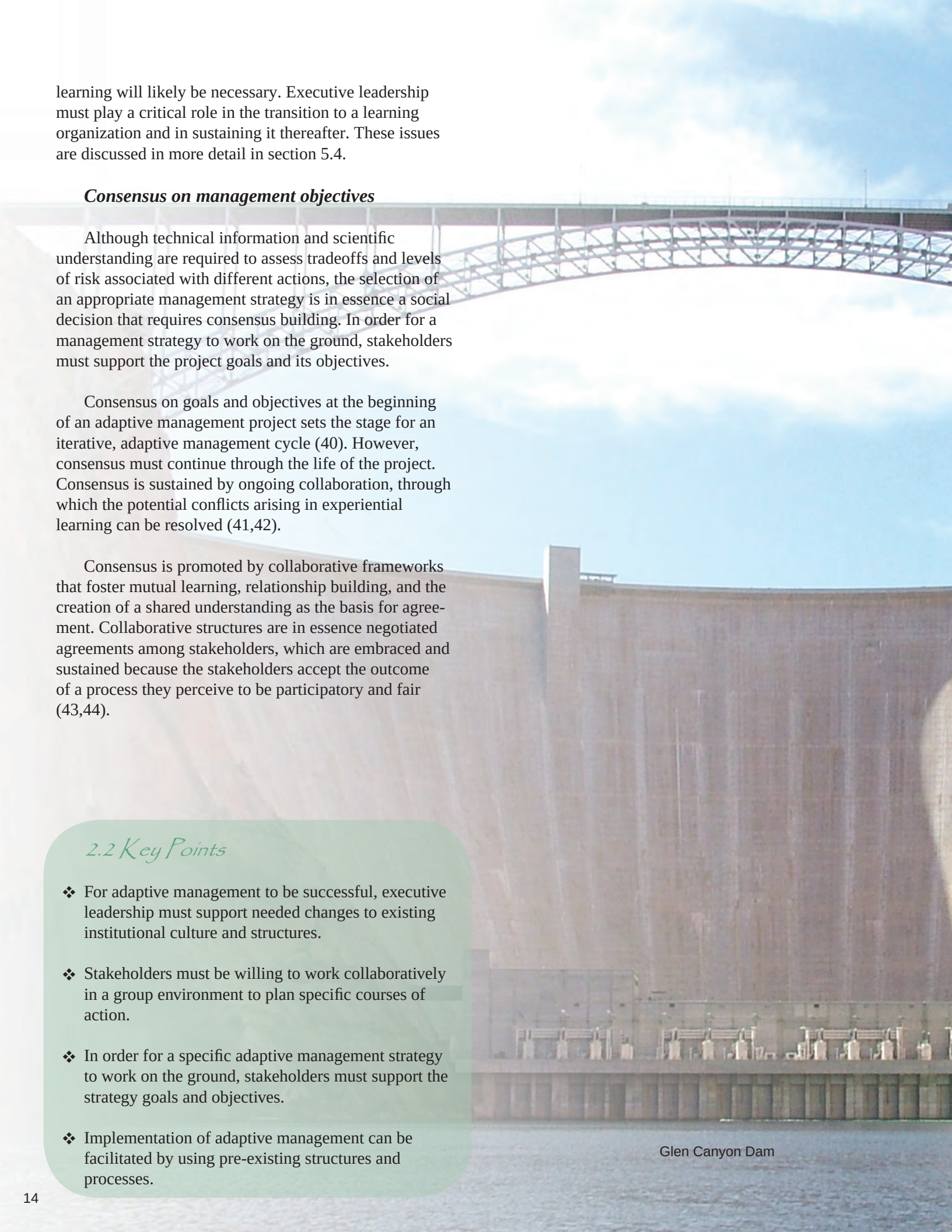
learning will likely be necessary. Executive leadership must play a critical role in the transition to a learning organization and in sustaining it thereafter. These issues are discussed in more detail in section 5.4.

***Consensus on management objectives***

Although technical information and scientific understanding are required to assess tradeoffs and levels of risk associated with different actions, the selection of an appropriate management strategy is in essence a social decision that requires consensus building. In order for a management strategy to work on the ground, stakeholders must support the project goals and its objectives.

Consensus on goals and objectives at the beginning of an adaptive management project sets the stage for an iterative, adaptive management cycle (40). However, consensus must continue through the life of the project. Consensus is sustained by ongoing collaboration, through which the potential conflicts arising in experiential learning can be resolved (41,42).

Consensus is promoted by collaborative frameworks that foster mutual learning, relationship building, and the creation of a shared understanding as the basis for agreement. Collaborative structures are in essence negotiated agreements among stakeholders, which are embraced and sustained because the stakeholders accept the outcome of a process they perceive to be participatory and fair (43,44).



Glen Canyon Dam

## 2.2 Key Points

- For adaptive management to be successful, executive leadership must support needed changes to existing institutional culture and structures.
- Stakeholders must be willing to work collaboratively in a group environment to plan specific courses of action.
- In order for a specific adaptive management strategy to work on the ground, stakeholders must support the strategy goals and objectives.
- Implementation of adaptive management can be facilitated by using pre-existing structures and processes.

## 2.3. Limitations of Adaptive Management

Although adaptive management often can enhance an agency's ability to achieve resource objectives, there are situations where its application may not be appropriate. An agency considering the employment of adaptive management should ensure that its use is suitable for the particular situation. Adaptive management should not be employed if one or more of the following limitations apply.

### *Decision making occurs only once*

If resource management decisions cannot be revisited and modified over time, then adaptive management cannot be meaningfully employed. Many decisions are essentially irreversible in that follow-up adaptation is either infeasible or impossible. An example is the removal of a dam on a large river where the decision can be made only once. Of course, such a decision may be part of a larger decision making program, for example the management of a watershed that includes many dams, where learning that follows from the removal of one dam informs subsequent decisions about other dams.

### *Monitoring cannot provide useful information for decision making*

A suitable monitoring strategy is a key requirement for any adaptive management approach. Data collected from monitoring are used to test alternative models and measure progress toward management objectives. There are several situations in which an effective monitoring program cannot be established:

- The frequency of monitoring cannot keep pace with changes in the natural system. If monitoring is too infrequent or the system changes at too rapid a pace, monitoring data may be unrepresentative of the resource system by the time a decision is to be made.

- A design for experimental management and monitoring cannot be developed to test hypotheses. If understanding of the resource system is so limited (or management is so constrained) that designing a meaningful experiment becomes problematic, adaptive management may not be appropriate. This problem is most likely to occur when the geographic scale of the problem is extensive, replication is difficult or impossible, or there are many potentially confounding environmental factors that combine to influence outcomes.

- A firm commitment to funding and institutional support for monitoring is lacking. Adaptive management should not be employed without a clear commitment to monitoring over the life of the project. If a commitment for monitoring is in question, it may be necessary to take another approach to decision making that does not rely on monitoring, such as expert systems, management intuition, or non-technical understanding of the system.

### *There are irresolvable conflicts in defining explicit and measurable management objectives or alternatives*

If explicit and measurable management objectives cannot be identified or alternatives cannot be determined, then adaptive management is not feasible. Conflicts may arise in a collaborative process in which stakeholders with different interests fail to agree upon these components. One alternative in this situation is conflict resolution. Collaborative management is never easy, and agencies and stakeholder groups should not abandon the approach until the possibility of agreement on the key components of adaptive management is exhausted.

### *Decisions that affect resource systems and outcomes cannot be made*

Adaptive management should only be considered in situations where management actions substantially influence the outcome. In certain situations, a management agency can only partially influence the resource system. For example, if an agency manages a relatively small area surrounded by private land, and the adaptive management project applies only to the agency-managed land, management activities on the private lands may well dominate the effect of agency actions. In such a situation, adaptive management is unlikely to be useful.

*Some resource decisions are essentially irreversible in that follow-up adaptation is either infeasible or impossible. An example is the removal of a dam on a large river where the decision can be made only once.*

***Risks associated with learning-based decision making are too high.***

It is sometimes considered inadvisable to use adaptive management when the "worst case scenario" resulting from a management action would be unacceptable to stakeholders. An example of such a situation might arise when management actions can lead to the extinction of extremely rare, threatened, or endangered resources. In this particular situation one approach might be to include management thresholds that prevent the worst-case scenario from occurring.

The limits of acceptable risk can vary substantially among applications, so adaptive management should not automatically be discounted even when dealing with rare or fragile resources. The relevant issue here is the value of information (see Section 2.1), taking into account the risks associated with learning-based decision making. In assessing risks, it is important to analyze the risk of the "do nothing" alternative, because the risk associated with maintaining the status quo may well be as high or higher than that of the alternatives.

In fact, an adaptive management approach often can alleviate the level of risk through a careful articulation of objectives, management alternatives, and other elements of the resource problem. If the levels of uncertainty and risk are high, an adaptive approach that includes pessimistic alternatives and very high penalties for negative outcomes may well be the preferred approach to management.

Each of the limitations listed above is often encountered in natural resource management. In addition, other conditions can undermine adaptive management, for example an inability to reach agreement about the key elements of structured decision making, or a mismatch between the rate of change in system process and the frequency of management interventions. When such limitations are encountered, decision makers should question whether the use of adaptive management is appropriate, and perhaps consider other approaches to manage public lands and resources.

*An example of high-risk management involves management actions that can lead to the extinction of extremely rare, threatened, or endangered resources.*

## 2.3 Key Points

- Adaptive management is not appropriate for single-time decision making.
- It is not appropriate if monitoring information is unavailable to decision makers.
- It is not appropriate if there are irresolvable conflicts about objectives or decision alternatives.
- It is not appropriate if management interventions cannot influence system behaviors in ways that affect management returns.
- It is not appropriate if there is not a commitment to sustained funding for monitoring and assessment.

## 2.4. Benefits and Challenges in using Adaptive Management

### Benefits

***An adaptive approach provides flexibility to act in the face of uncertainty***

Adaptive management helps managers address resource issues by providing the flexibility to adjust management actions as additional understanding is gained. It can help determine whether management actions are having desired effects and whether mitigation measures are cost effective. The flexibility of adaptive management to respond to changing environmental conditions and improved understanding can result in better decision making.

***An adaptive management approach is learning based***

The concept of learning is central to adaptive management (8), with learning seen as a means to good management. Learning within the context of adaptive management derives from evaluation of previous management actions, the results of which are used to inform subsequent actions (8). The premise of an adaptive management approach is that the behavior of resource systems is uncertain but management is required anyway, and the reduction of uncertainty over time can lead to better management.

***Adaptive management specifies what actions are to be taken and when***

Adaptive management produces management strategies that specify what management actions are to be taken and how and when they should be adjusted. These strategies are based in turn on an explicit articulation of the management problem, what is known (and not known) about the resource system being managed, and the objectives of management (8). This explicitness makes it possible for stakeholders to focus on the key attributes involved in learning-based resource management, while avoiding the confusion and controversy that typically results when key management elements are not open to discussion and negotiation.

***Adaptive management encourages long-term collaboration among stakeholders***

Adaptive management brings resource managers, researchers, and other stakeholders together and encourages long-term collaboration through the development and strengthening of institutional ties (45). These ties are important in maintaining the level of support needed to successfully implement adaptive management. Through strengthened collaboration, stakeholders can be encouraged to remain involved over the life of an adaptive management project.

***Adaptive management promotes optimal decision making with the information available***

Adaptive management fosters the acquisition of new knowledge and understanding by specifying hypotheses and designing management alternatives to test them against field data (8, 46). The information accumulated through this process is used to adjust strategy periodically on the basis of what has been learned. In this sense, adaptive management allows decision makers at each juncture to make the best decisions they can with the information available at that time (41).

# Challenges

### *Institutional reluctance to change*

For adaptive management to be embraced on an institutional level, refinements in existing approaches to natural resource management are needed (8,47). An example might involve new ways of dealing with overlapping responsibilities and authorities among agencies, so as to reduce or eliminate resistance to one agency's adaptive management project by another agency that has regulatory oversight.

Some barriers to implementation go beyond the operational level. One such barrier is an inadequate recognition that the targets of resource management are rapidly becoming more inclusive. For example, ecosystem management traditionally is approached by targeting only one or a few system attributes, failing to account for the broader resource context and its implications for resource management. A framework for adaptive management allows the resource problem to be identified in a more inclusive context that includes issues like system viability and sustainability.

Another institutional barrier is a lack of the resource planning and design capacity that are required for adaptive management (see Section 3.1). For example, agency programs often have an inadequate capacity for the outcome-based monitoring needed for adaptive management. The problem here is not so much an inability to understand the process and procedures of adaptive management, as it is that program operations focus on tracking and assessment of activities and outputs rather than resource outcomes.

Implementation of adaptive management will require a shift in focus toward resource sustainability as a strategic target, with resource planning and design, decision-based monitoring, and assumption-driven research as central activities. In essence, adaptive management will require refinements to the resource management business model and adjustments in the organizational and institutional arrangements that support it. See Section 5.4 for further discussion on organizational roles and implications.

### *Commitment to monitoring and evaluation over the life of the project*

In times of shrinking funding, managers must carefully assess the cost of the monitoring and assessment that inform decision making in an adaptive approach. The costs of timely monitoring and assessment over extended time scales are substantial, and often appear to be especially high at the outset of a project when compared with the costs of trial and error with only incidental monitoring (8). Agencies must be willing to make a commitment to cover the costs of monitoring and evaluation over the life of an adaptive management project; otherwise, discontinuing the monitoring effort will lead quickly to the cessation of adaptive decision making. Agencies also need to commit to a schedule for monitoring, analysis, and re-examination of decisions as understanding accumulates. In the absence of a commitment of resources for timely monitoring and evaluation over the life of the project, the use of adaptive management becomes problematic.

### *Significant time lags between management actions and their impacts*

Time itself is a challenge in implementing adaptive management (48). In many cases, the overall costs associated with adaptive management are tied as much to the timeframe of the project as they are to its complexity. Some adaptive management plans require years of monitoring in order to be able to ascertain the results of an initial action. Of course, models that forecast some future endpoint as a consequence of a decision or series of decisions should also be able to predict resource status at various intervals prior to that endpoint, allowing management assessments to be performed on the predicted status over an abbreviated interval. The problem of time lags is further complicated by the fact that individual decision makers and/or managers rarely remain in the same position over the needed timeframes (8).

### *Implementing adaptive management in a complex legal environment*

Legal issues must be weighed when deciding whether to implement an adaptive management strategy. In many cases, a NEPA decision process is required of federal agencies.

Depending on the resource problem and the scope of the project, requirements under other federal laws may also be triggered. Some laws may constrain or even preclude the use of adaptive management (see Section 3.2); on the other hand, legal considerations sometimes can be successfully integrated with it. Indeed, the case studies included on the enclosed CD suggest that adaptive management might make NEPA compliance more effective and efficient in some instances.

### *Collecting enough information to evaluate progress*

The amount of data required for adaptive management depends on the system being managed, the actions being implemented, the objectives of management, and the amount of uncertainty (49,50). Project costs obviously increase for applications that require more frequent monitoring and the collection of larger amounts of data during each monitoring event.

Projects should be assessed individually, with each project tailored to the resource being managed, the environmental conditions of the project area, the project objectives, and the capabilities of the manager to implement decisions and carry out the subsequent monitoring and assessment. A considerable amount of up-front planning may be required; however, an initial investment of time and effort increases the likelihood of better decision making and resource stewardship in the future.

*Projects should be tailored to the resource being managed, the environmental conditions of the project area, the project objectives, and the capabilities of the manager to implement decisions and carry out the subsequent monitoring and assessment.*

## 2.4 Key Points

- Adaptive management promotes cooperative decision making in the face of uncertainty about the impacts of management interventions.
- Adaptive management produces management strategies consisting of actions that are tied to resource status and current understanding.
- Adaptive management brings resource managers, researchers, and other stakeholders together and encourages long term collaboration.
- Resistance to institutional change and a complex legal environment can be impediments to adaptive management.
- Agencies must be willing to commit to monitoring and evaluation over the life of an adaptive management project.

# Chapter 3: How Should Adaptive Management be Implemented?

3

From an operational point of view, adaptive management simply means learning by doing (i.e., learning through management) and adapting what one does based on what is learned (i.e., adjusting management as understanding improves). Learning contributes to management by providing information on which to base management strategies, and management reinforces learning by implementing actions that are useful in investigating the resource system. A sequential application of these component activities should produce both improved understanding of resource dynamics and improved resource management (51).

As noted earlier, the emphasis in an adaptive approach is first and foremost on resource management. The value of understanding, and the monitoring and analysis that produce understanding, is inherited from their contributions to the objectives of resource management. Although the focus is on learning, the ultimate goal of the effort is smart management.

This chapter focuses on the implementation of adaptive management. The actual process of using adaptive management is discussed in terms of its key structural elements and the integration of these elements into an iterative cycle of management, monitoring, and assessment. Also highlighted are some legal issues that focus on compliance with the relevant environmental and administrative laws.

## 3.1. Operational Sequence for Adaptive Management

Implementation of adaptive management can be described in terms of two phases: a set-up phase in which its key components are developed, and an iterative phase in which the components are linked together in a sequential decision process. The set-up phase has five structural elements, namely stakeholder involvement, management objectives, potential management actions, predictive models, and monitoring plans. The iterative phase uses these elements in an ongoing cycle of learning about system structure and function, and managing based on what is learned.

Although adaptive management is described here by a series of steps in the set-up and iterative phases, it is important to recognize that adaptive management is a complex endeavor that includes much more than simply following a sequence of steps. Properly executed, the process involves ongoing, real-time learning, both in a technical sense and in terms of process itself. Stakeholders need to be engaged at the stage of initial problem formulation and remain engaged throughout implementation. By implication, an adaptive approach to management improves on the traditional communications approach in which scientists create knowledge and then pass it on to practitioners, with other stakeholders acting as passive observers (51). Instead, an adaptive approach actively engages parties in all phases of the project, facilitating mutual learning and reinforcing the commitment to learning-based management.

### Set-up phase

Adaptive management prescribes the integration of decision making, monitoring, and assessment into an iterative process of learning-based management. To implement the process, certain elements must be put in place, and then used in a cycle of iterative decision making.

# Step 1 - Stakeholder involvement

***Ensure stakeholder commitment to adaptively manage the enterprise for its duration***

Of particular importance in adaptive management is that stakeholders assess the resource problem (see Fig. 1.1) and reach agreement about its scope, objectives, and potential management actions, recognizing that differences of opinion about system responses may exist even when there is consensus on these issues. Clearly, agreement about scope, objectives, and interventions is not possible in the absence of stakeholder involvement in establishing them. Thus, a first step in adaptive management is to engage the appropriate stakeholders (See Case Study 1 and BLM Collaboration Desk Guide on CD for a discussion of stakeholder involvement).

**Case Study 1:** For decades, there has been concern about the ecological impacts of the operation of Glen Canyon Dam on downstream resources, particularly the riparian areas along the Colorado River in the Grand Canyon, Arizona. In recent years efforts have been made to evaluate and adapt management actions for resource protection through experiments that are monitored for their effects in the Grand Canyon. (See included CD for additional information on this project).

Several activities are involved. First, stakeholders must be identified and encouraged to participate. This might involve personal contacts, public announcements, formal consultations, or other means. Second, a process must be implemented that solicits stakeholder input in the design of the adaptive management project and, in particular, the identification of management objectives and potential management actions. Depending on the project, this may require formal or informal consultations, legally mandated and administered procedures, or other approaches. In any case, stakeholder involvement in identifying key components of the project should be open and transparent. Third, stakeholders must commit to an agreed-upon process of reducing uncertainties and/or disagreements about the effects of management. That is, having reached agreement on the scope of the management problem and its objectives and potential interventions, stakeholders must then commit to an iterative process of objective-driven decision making.

In general, the group of stakeholders should be broad enough to express the uncertainty (perhaps through disagreement) that is the focus of adaptive management. However, adaptive management is not prescriptive about who the stakeholders are, how many there are, or what their perspectives or values are. The scale and complexity of stakeholder involvement can vary greatly among projects and is influenced by the scale and complexity of the application itself. Many adaptive management projects involve only one or a few stakeholders, as with a refuge manager who is unsure how to manage water control structures on the refuge, or a farmer who is unsure how to seed and cultivate some of his farmland, or a fish hatchery manager who is uncertain about how long to age fish stocks before releasing them in a reservoir. Other projects may involve a large number of disparate stakeholders, as with the seasonal release of water from a dam on a large river, or the production of timber on a large regional forest, or the management of a coastal fishery. As a general rule, the number of stakeholders, and the breadth of their perspectives and values, will vary with the geographic, ecological, administrative, and political scale of the adaptive management project.

Stakeholders should play a role in identifying the scope of the project as well as the objectives and potential management actions. Within a context of legal and institutional boundaries, stakeholders help to define the operating environment of an adaptive management project, and they influence both decision making and the opportunity to learn. All too frequently, a decision making process is undertaken without agreement about scope, objectives, and management alternatives. Without this agreement, any management strategy likely will be viewed as reflecting unshared objectives and inappropriate or unnecessary limitations on management. The prospects for conflict increase dramatically in such a situation.

The success of an adaptive management project requires an adequate understanding of the resource issues and the dedication to stay abreast of new information. The interface between scientific investigation and stakeholder understanding becomes increasingly difficult as proposed actions become more technical, and it is not uncommon for both scientists and stakeholders to become impatient and frustrated. Engagement and communication among stakeholders is critically important if arguments on the meaning of science are to be minimized.

Of particular concern in adaptive management is the asymmetry between management interventions, which often must be implemented in a relatively short amount of time, and their impacts, which sometimes require years or even decades to be recognized. This asymmetry imposes special demands on stakeholders to remain engaged over an adequate timeframe for learning to occur. Among other things, it may be useful, and even necessary, to design monitoring and assessment programs at different scales, so as to build understanding incrementally while anticipating unexpected results that may require adaptations in the project. Otherwise, premature interruption of monitoring efforts, or stakeholder pressure to terminate the application of adaptive management, could short-circuit the expected benefits of improved decision making.

Recognizing stakeholder interests and ensuring their involvement for the duration of the management enterprise are requirements for learning–based management in general. But involvement is more than passive participation in information sharing and other stakeholder prerogatives. Adaptive management involves the commitment of time, resources, and active engagement of stakeholders. These requirements often are underestimated. If stakeholders are unwilling to dedicate sufficient time and effort, group deliberations have the potential to devolve into value-based arguments, minimizing the positive impacts of monitoring and evaluation. Program documents should explicitly state the responsibilities of the stakeholders, and every effort must be made to ensure that stakeholders will meet those responsibilities over the life of the project.

## Step 1- Key Points

- A strong effort must be made to identify and engage the appropriate stakeholders.
- All phases of the adaptive management process must be open, transparent, and accessible to stakeholders.
- Stakeholders must strive for agreement on scope, objectives, and management alternatives for the adaptive management application.
- Stakeholders must commit to a process for adjusting management strategy over time, based on resource status and learning.
- Stakeholder organizations must be encouraged to commit time and energy to adaptively manage the resource over the agreed-upon timeframe.
- Stakeholders must commit resources for monitoring and assessment, in addition to decision making.

Bemidji Crude-Oil Research Project; measuring crude-oil thicknesses during the aquifer test.

## Step 2- Objectives

***Identify clear, measurable, and agreed-upon management objectives to guide decision making and evaluate management effectiveness over time***

Objectives, resource status, and learning all influence the choice of management interventions in adaptive management. But objectives also play a crucial role in evaluating performance, reducing uncertainty, and improving management through time. It therefore is important to have clear, measurable, and agreed-upon objectives at the outset, to guide decision making and assess progress in achieving management success (See Case Study 2 for a discussion of setting objectives).

The term "objective" is used here to mean some desired outcome or performance measure that can be used to guide decision making and measure success. Objectives typically are expressed in terms of management performance over the timeframe of a project. For example, measures might be harvest yield, population size, water flows, or the probability of a negative impact on resource status, with an objective of maximizing accumulated harvest, achieving a desired population size, maintaining water flow, or minimizing a probability of extinction.

Because management objectives are used to guide decisions in managing (and often changing) certain aspects of a target resource through time, they should be more specific than common, "broad-brush" statements or overall program purposes that appear in many project documents. For example, generic statements such as "provide public access and recreational opportunities" or "improve water quality to enhance and restore commercial fishing" are purpose statements indicating why management is to be undertaken, rather than objectives that can help to guide decision making.

Objectives should address the resource issue or problem that initially motivated management, and reflect the social, economic, and/or ecological values of stakeholders. Underlying an adaptive approach is the recognition that stakeholders influence what is to be managed and under what circumstances. Finding common ground among disparate and often contentious parties is not an easy task when there are differences in understanding about the resource system and differences in ideas about the desired focus and direction of management. For objectives to be realistic and mutually acceptable, parties must work toward an agreement on the purpose and approach to resource management and seek a common basis for recognizing management success. In particular, objectives should be defined cooperatively through a dialogue among managers, scientists, and other stakeholders.

In the context of adaptive management, objectives must be relevant to the decision making process and possess a number of attributes that render them useful as guides to management (52). To be useful for decision making and evaluation, objectives need to exhibit the following technical features:

- **Specific:**
Objectives should be unambiguous, with specific metrics and specific target conditions. Specificity can be encouraged by articulating objectives with Who, What, Why, and/or Where phrases.

- **Measurable:**
Objectives should contain elements that can be readily measured, so as to promote the evaluation of management actions and recognize their contributions to successful management.

- **Achievable:**
Objectives should be based on the capacities of the natural resource system being managed and the political or social system within which management occurs.

- **Results-oriented:**
Objectives should contain for resource endpoints and/or conditions representing their achievement. For example, a results-oriented habitat objective might describe the habitat conditions expected when the objective is achieved.

- **Time-fixed:**
Objectives should indicate the timeframe for achievement, consistent with the duration of the project. Project implementation may be in stages, but the overall timeframe should be clear.

It is often the case in adaptive management that there are multiple objectives for resource management. For example, one might seek to sustain species richness in a refuge, while attempting to maximize visitor use, maintain a harvest program for one or more species of wildlife, and allocate resources to these activities so as to minimize costs. In such a situation it is important to be able to weigh different objectives in terms of their perceived importance, so as to facilitate the comparison and prioritization of management alternatives.

## Step 2- Key Points

- Objectives substantively influence decisions and management strategies.
- Objectives should incorporate the social, economic and/or ecological values of stakeholders, and reflect the value of learning over time.
- To be useful as guides for decision making and evaluation, objectives should be specific and unambiguous, measurable with the appropriate field data, achievable but challenging, results-oriented, and applicable over the timeframe of the enterprise.

**Case Study 2:** The Trout Creek Mountain Restoration focuses on compatibility between livestock grazing and critical habitat for listed Lahontan cutthroat trout within the Trout Creek and Oregon Canyon Mountains, Oregon. This time sequence shows the dramatic changes along Cottonwood Creek, V Pasture, looking downstream starting in 1988. Until 1989 this pasture was grazed during the summer every year. Despite changes in the timing and intensity of grazing, chronic trespass prevented acceptable levels of riparian improvement. Enforcement, changes in permittees, and fence repairs since then have allowed 2 years of actual rest. Note the increased reproduction in aspen by 2002. (See included CD for additional information on this project).

## Step 3- Management actions

***Identify a set of potential management actions for decision making***

Like any iterative decision process, decision making in adaptive management involves the selection of an appropriate management action at each point in time, given the status of the resources being managed at that time. Resource managers and stakeholders, typically working with scientists, have the responsibility of identifying the set of potential actions from which this selection is made (See Case Study 3 for a discussion about identifying management actions).

The management alternatives in an adaptive management project constitute a key element in its operating environment, and they can strongly influence the selection of a management strategy (see Section 5.1). Just as the choices made in daily life depend on one's available options, so too are strategy choices in an adaptive management project constrained by the set of available options. If these options fail to span a reasonable range of management activities or fail to produce recognizable and distinct patterns in system responses, adaptive management will be unable to produce effective and informative management strategies. This argues for careful thinking about the potential actions to be included in a project.

**Case Study 3:** The Sonoita Valley Planning Partnership is an ad hoc, volunteer association of Federal, State, and local agencies, user groups, organizations, and individuals with a common interest in the upper Cienega watershed, which includes the 42,000 acres of public lands within the Las Cienegas National Conservation Area, Arizona. The goal of the partnership is to perpetuate naturally functioning ecosystems while preserving rural grasslands for future generations. (See CD for additional information on this project).

**Case Study 4:** The Five Rivers Landscape Management Project began in 1998 as an attempt to apply adaptive management at large scales. The project was designed for 32,000 acres of productive Siuslaw National Forest land in coastal Oregon. (See CD for additional information on this project).

Management alternatives in adaptive management often focus on a potential change in resource status or the alteration of process rates. Examples of the former include culling a livestock herd to maintain a population at carrying capacity, stocking a lake to sustain a fishery, or withdrawing water from a reservoir to maintain an appropriate volume of water in it. Examples of the latter include harvest regulations that target an acceptable mortality rate, alteration of nesting habitat to enhance population reproductive rate, or control of the amount and timing of visitor disturbance so as to influence avian migration patterns positively.

In designing an adaptive management project, management alternatives should be included that will produce different responses and thereby promote learning. One way to structure alternatives for this purpose is to limit their number, and maximize differences among them. An example is the Five Rivers Landscape Management Project (See Case study 4), which used three different management alternatives: (1) passive management in which plantations are allowed to develop into old growth with no intervention other than road closures; (2) frequent light-touch thinning and road maintenance; and (3) heavy thinning followed by 30-year road closures. Another example involves the impact of harvest, which is likely to be easier (and less costly) to recognize with a few widely spaced harvest rates rather than many that are closely spaced. In both examples a smaller number of alternatives helps to reduce implementation costs, minimize problems that otherwise can arise with partial controllability (see Section 5.2), and highlight differential responses of the resource.

Because of natural variation, resource systems often are extraordinarily difficult to control with management actions, and “cause and effect” relations are usually unclear and difficult to recognize. It is important to include options that can help to reduce these difficulties, though this sometimes leads to a broader range of

potential actions than otherwise would be desireable. In any case, the options under consideration should always be designed to achieve specific objectives.

To ensure clarity and transparency it is important to make the management options explicit. Too often the set of options is unstated, and simply assumed to be recognized and understood by managers and other stakeholders. Ambiguity as to the alternatives under consideration can lead to conflict among stakeholders and the possibility of legal challenges to the decision making process.

The identification of management options is often a greater challenge than some anticipate. Just as different stakeholders see the resource system differently and identify different objectives for its management, so will they recognize differences in the feasibility and acceptability of management options. Even when there is rough agreement on their nature and extent, there still may be different perspectives about the appropriate number and composition of management alternatives. It is important to take the necessary time and effort to think carefully about these issues, so as to reach agreement on a realistic and politically acceptable set of alternatives.

*Because of natural variation, resource systems often are extraordinarily difficult to control with management actions, and "cause and effect" relations are usually unclear and difficult to recognize.*

## Step 3- Key Points

- Potential actions consist of activities under management control (for example, harvest, stocking, restoration).
- Alternatives typically focus on alterations of resource status or process rates.
- The suite of available actions should be designed to promote learning.
- The alternatives should be explicit and documented.
- Stakeholders should participate in the identification of alternatives.

# Step 4- Models

***Identify models that characterize different ideas (hypotheses) about how the system works***

Models play an important role in virtually all applications of structured decision making, whether adaptive or otherwise. In order to make smart decisions, it always is important to compare and contrast management alternatives in terms of their costs, benefits, and resource consequences. Models typically express benefits and costs as outputs of management through time. More importantly, they allow one to forecast the impacts of management.

The term "model" is used here to mean a plausible representation of a dynamic natural resource system (See Case Study 5 for a discussion of model development). Models can be as informal as a verbal description of system dynamics (for example, a simple description of reservoir size that is positively influenced by runoff and negatively influenced by water release), or as formal as a detailed mathematical expression of change (for example, an age-structured multi-species model with density-dependent vital rates that are affected by random environmental changes). The models used in an adaptive management project are not restricted to a particular kind. In many instances only a few models are required to capture contrasting views about the system, and these often can be described with limited technical detail.

**Case Study 5:** In 1995, the U.S. Fish and Wildlife Service implemented an approach known as adaptive harvest management, in which managers seek to maximize sustainable harvests against a background of various sources and degrees of uncertainty. (See CD for additional information on this project).

Although model complexity can vary widely depending on the ecological and management scale of the application, the models used in adaptive management generally share certain attributes (53):

- Resources are described as changing though time, so as to allow learning to occur and management to adapt to learning (Fig. 3.1).

- The resource system is characterized by key components of interest (for example, population size, resource biomass or volume, biodiversity) that are the focus of management and the targets of monitoring.

- Resource changes often are described in terms of processes (for example, reproduction, mortality, spatial movement) that are thought to be directly influenced by management.

- Fluctuating environmental conditions are incorporated as needed to characterize resource dynamics.

- Management impacts are described in terms of costs, benefits, and influences on resource components or processes that are highlighted in the model.

- Models are calibrated with available data and knowledge, to ensure compatibility with current understanding about resource structures and functions.

Models play a key role in representing uncertainty. In adaptive management, structural or process uncertainty is captured in contrasting hypotheses about system structure and function, and the hypotheses are imbedded in the suite of models used to forecast resource changes through time. At any point, the available evidence will suggest differences in the adequacy of each of these models to represent resource dynamics. As evidence accumulates over time, the confidence placed in each model (and its associated hypothesis) evolves, through a comparison of model predictions against monitoring data.

To be useful, the models in a particular project must meet certain conditions, including a requirement that different models predict different outcomes in response to management. However much two models may differ in the way they describe system dynamics, if both predict the same responses to management, then recognizing which is more scientifically credible will be of little use in improving management.

An example that highlights many of these points is the modeling framework used for adaptive harvest management of waterfowl. Adaptive Harvest Management (AHM) was initiated in 1995 as a process for setting annual regulations for the sport hunting of waterfowl in North America (37). For AHM, a simple model was used to account for associations among fall harvest, seasonal survivorship, and spring reproduction (Fig. 3.2). Contrasting hypotheses about the impact of harvest on annual survivorship were easily incorporated into different versions of the model, by describing different functional relations between harvest rates and post-harvest survival. In addition, contrasting hypotheses about the importance of density dependence in recruitment were incorporated by describing recruitment in terms of spring population size. In combination, these hypotheses define four models, each with its own predictions about harvest impacts and each with its own measure of confidence that evolves over time (54). The models and their measures of confidence characterize structural or process uncertainty, which is reduced over time as harvest actions are taken and post-harvest monitoring data are used to update the confidence measures.

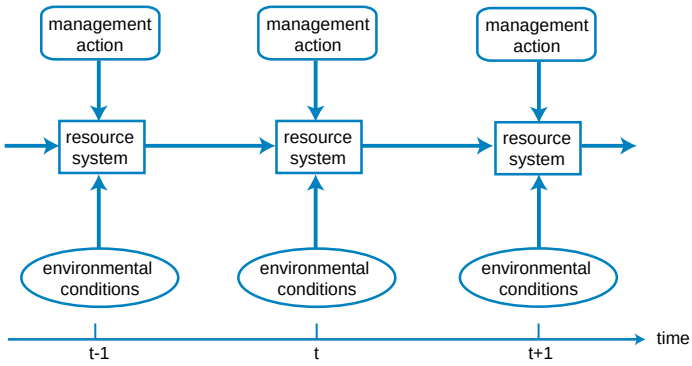



**Figure 3.1.** Change in resource system as influenced by fluctuating environmental conditions and management actions. Management produces immediate returns (costs and/or benefits) and longer-term changes in resource status.

Like the management options in an adaptive management application, models can strongly influence the identification (and acceptability) of management strategies. If the models fail to incorporate meaningful hypotheses, or fail to produce recognizable differences in population dynamics, an adaptive approach may be unable to produce useful and informative strategies. This argues for engaging managers, resource scientists, and other stakeholders in a thoughtful and deliberate process of selecting the models to be used in an application.

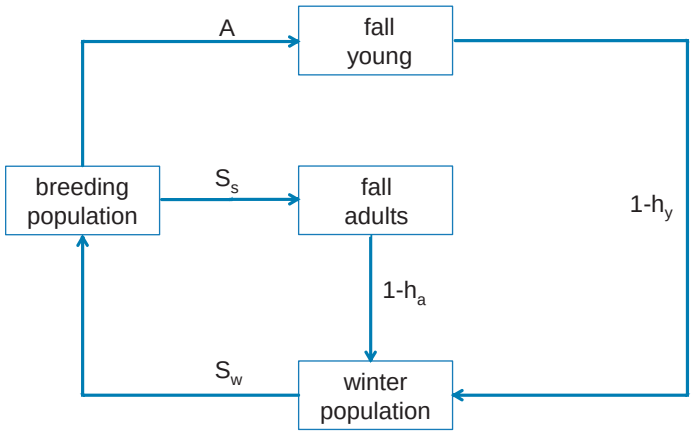



**Figure 3.2.** Conceptual model of the annual cycle of mallard population dynamics. Model includes survival rates for spring-summer ($S_s$) and fall-winter ($S_w$), along with harvest rates for young ($h_y$) and adults ($h_a$) and age ratio (A) for reproduction/recruitment.

## Step 4- Key Points

- Models in adaptive management should characterize system behaviors and responses to management actions.
- Models should incorporate different ideas (hypotheses) about how the resource system works and how it responds to management.
- The suite of models should capture key uncertainties (or disagreements) about resource processes and management effects.
- Models must be compatible with, and calibrated to, available data and knowledge.

## Step 5- Monitoring plans

***Design and implement a monitoring plan to track resource status and other key resource attributes***

The learning that is at the heart of adaptive management occurs through a comparison of model-based predictions against estimated responses based on monitoring data. It is by means of these comparisons that monitoring is used to understand resource dynamics, and thus to confirm the most appropriate hypotheses about resource processes and their responses to management. By tracking useful measures of system response, well designed monitoring programs facilitate evaluation and learning in adaptive management.

In general, monitoring provides data in adaptive management for four key purposes:

(i) to evaluate progress toward achieving objectives;

(ii) to determine resource status, in order to identify appropriate management actions;

(iii) to increase understanding of resource dynamics via the comparison of predictions against survey data; and

(iv) to enhance and develop models of resource dynamics as needed and appropriate.

Monitoring programs should be designed from the outset to inform decision making with data that are relevant to the management issues in the adaptive management project (55,56). For example, variables such as survival, harvest, stocking, and reproduction rates can be estimated with properly designed monitoring efforts and used to adaptively manage a biological population. Surveys producing such information can be invaluable as sources of longterm data with which to develop the adaptive management project (See Case Study 6 for a discussion about developing a monitoring plan).

Monitoring in adaptive management inherits its focus and design from the larger management context of which it is a part. Thus, field surveys are not motivated by scientific curiosity, nor are survey data gathered with only a vague hope that somehow they will prove useful for management. Instead, monitoring programs are designed to focus on the information needed to make management decisions and evaluate their impacts. There may be scientific or other values in broad-scale surveillance monitoring, and data collected in this way can sometimes prove useful for resource conservation. But monitoring in the context of adaptive management is much more efficient and effective if it targets specific attributes for the specific purposes listed above. Simply put, the value of monitoring in adaptive management is derived from its contribution to adaptive decision making, and monitoring efforts should be designed with that goal in mind (57).

## Step 5- Key Points

- A monitoring plan should be designed to estimate system state and other attributes needed for decision making and evaluation.
- The plan should promote learning through a comparison of estimates against model-based predictions.
- The plan should be efficient, in that it produces estimates that have maximum precision for a given cost, or minimum cost for a given level of precision.

**Case Study 6:** The Bully Creek Landscape Area Management Project of the Bureau of Land Management is within the Malheur Resource Area, Vale District, Oregon. The project represents ground-level resource planning for public lands. On the top are views of Allotment #3 on a tributary of Cottonwood Creek in 2001 (first year after change in riparian management) and 2005 (after 5 seasons of riparian management). On the bottom are views of the Muir Spring aspen stand (with protective fencing) in 2003 (first year after treatment), and 2006, which shows a close-up of the same site with continued aspen regeneration. (See CD for additional information on this project).

## Iterative phase

At this point in the operational sequence of adaptive management it is assumed that the key elements are in place. Thus, the appropriate stakeholders have been engaged in articulating the scope and nature of the resource issue. The objectives and management alternatives of the project have been identified. Forecasting models that capture uncertainty (or disagreement) about the impacts of management have been identified. And a monitoring effort has been designed that targets the resource attributes needed for learning, evaluation, and decision making. The stage is now set to incorporate these elements into an iterative decision process that will lead to improved understanding and management.

## Step 6- Decision making

***Select management actions based on management objectives, resource conditions, and understanding***

At each decision point in the timeframe of an adaptive management project, an action is chosen from the set of available management alternatives. The management objective identified in Step 2 is used to guide this selection, given the state of the system and the level of understanding when the selection is made. The appropriate action is likely to change through time, as understanding evolves and the resource system responds to environmental conditions and management actions. That is, management is adjusted both to changing resource status and to learning. It is the influence of reduced uncertainty (or learning) on decision making that makes the decision process adaptive.

There are many ways to design the actual process of selecting an alternative. For example, formal optimization methods can be used to select from the available management alternatives an option that best accounts for current and future consequences (53,58,59). Alternatively, less computation-intensive search procedures can be used to produce suboptimal (but in many cases quite acceptable) management strategies. Finally, one sometimes can rely on less structured approaches or common sense to identify acceptable strategies. Irrespective of the approach, decision making should be driven by the management objectives and informed by resource status and process uncertainties.

### Step 6- Key Points

- At each point in time, selection of a management action is made from the set of possible alternatives.
- The selection of a management action is guided by objectives, which are used to evaluate alternatives and identify an action that contributes to meeting the objectives.
- The appropriate action depends on resource status and the current level of understanding about resource dynamics.
- Management is adjusted over time as resource conditions change and understanding evolves.

## Step 7- Followup monitoring

***Use monitoring to track system responses to management actions***

Monitoring is used in adaptive management to track system behavior, and in particular to track the responses to management through time. In the context of adaptive management, monitoring is seen as an ongoing activity, producing data after each management intervention to evaluate the intervention, update the measures of model confidence, and prioritize management options in the next time period (See Case Study 7 for a discussion of follow-up monitoring).

Field surveys, banding programs, remote sensing, and other monitoring approaches can generate the data needed to estimate key indicators of resource dynamics (20). The information thus produced is used to compare data-based estimates of system components against expectations, and thus to measure performance in achieving management objectives. Monitoring information also factors directly into the learning process, through the comparison of estimates against model predictions. Subsequent decision making reflects the increasing degree of credibility earned by the most appropriate model(s), and management performance is adaptively improved.

Monitoring data play into these assessments in multiple ways. For example, estimates of system state typically are used in the process of identifying state-

specific decisions. In some cases, estimates of resource status are directly included in the objectives, and thus are needed to assess the expected benefits, costs, and consequences of particular decisions. Of particular importance in adaptive management is the use of estimates of status and perhaps other attributes for comparison against model predictions so as to improve understanding of resource dynamics.

In many but not all instances, it is useful to collect data prior to initiating management. For example, if the management objective is to increase the size of a previously unperturbed population over some time period, a "baseline" population size prior to any management intervention can be used to compare population size before and after the initial intervention. On the other hand, an objective of maximizing harvest may not require baseline conditions prior to the start of management. In the latter case, decision making pursuant to the objective is not informed by a comparison of resource status against a starting value. The point here is that the design of a monitoring effort, and in particular the need for initial "baseline" information, is determined by the nature of the project and its objectives. Even when baseline information is needed, its comparative value declines rapidly as the project proceeds through time, essentially because monitoring after each intervention establishes new "baselines" throughout the life of the project.

## Step 7- Key Points

- Monitoring typically occurs after management interventions.
- Resource status and other key indicators of impacts are estimated with monitoring data.
- Estimates based on monitoring data are used to evaluate management impacts and inform decision making at the next decision point.
- Because the amount of monitoring data increases over the course of an application, the amount of information about system processes also increases.

**Case Study 7:** The National Park Service (NPS), State of Montana, USDA Forest Service, and the USDA Animal and Plant Health Inspection Service developed an adaptive management strategy in 2000 that allows Montana to maintain its brucellosis-free status and NPS to maintain a bison population that fluctuates in response to ecosystem processes. (See CD for additional information on this project).

## Step 8- Assessment

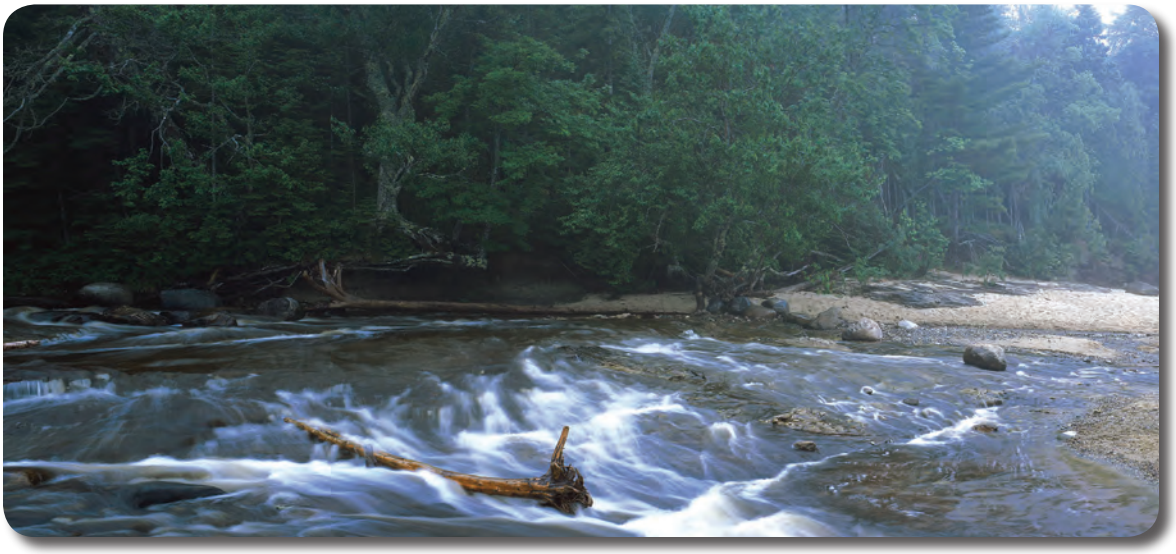
***Improve understanding of resource dynamics by comparing predicted and observed changes in resource status***

The information produced by monitoring folds into assessments of decision making, performance evaluation, and learning. For example, the comparison of model predictions against estimates of actual responses is a key element of learning, with the degree of coincidence between predicted and observed changes used as an indicator of model adequacy. Confidence is increased in models that accurately predict change, and confidence decreases for models that are poor predictors of change. In this way evidence accumulates over time for the most appropriate hypothesis about resource dynamics, and understanding of the resource system is thereby advanced.

As important as it is, learning is not the only role played by analysis and assessment in adaptive management. Thus, an assessment of desired against actual outcomes can be used to evaluate the effectiveness of management and measure its success in attaining management objectives. In addition, an assessment of management alternatives as to their projected costs, benefits, and resource impacts contributes to the selection of a management option in the next time period.

### Step 8- Key Points

- Assessment/analysis includes parameter estimation, comparative assessments, and prioritization of management alternatives.
- Comparison of predicted and actual responses is used to update understanding of management impacts.
- Comparison and ranking of projected outcomes for management alternatives is used in selection of management actions.
- Comparison of desired and actual outcomes is used to evaluate management effectiveness.



## Step 9- Iteration

***Cycle back to Step 6***

The gain in understanding from monitoring and assessment in Steps 7 and 8 is used to inform the selection of a management action at the next decision point. As understanding evolves, so too does the decision making that is influenced by improved understanding. In this way, the iterative cycle of decision making, monitoring, and assessment leads gradually to improved understanding of resource dynamics, and improved management as a consequence of improved understanding.

As shown in Fig. 3.3, the iterative cycle can begin with any of the Steps 6 to 8. However, it is useful to think of it as starting with a management decision, which is followed by post-decision monitoring and the subsequent assessment of monitoring data. This sequence of activities is repeated over the course of the application, during which learning occurs continuously and the management strategy is continuously adjusted based on what is learned.

The cycle typically terminates at the end of the time-frame with a final management action that is informed by assessment of the data collected just prior to the terminal time. It is also possible, if unlikely, that all uncertainty about ecological structure and function can be eliminated at some point, whereupon the learning-based adaptive approach can give way to non-adaptive resource management for the remaining time.

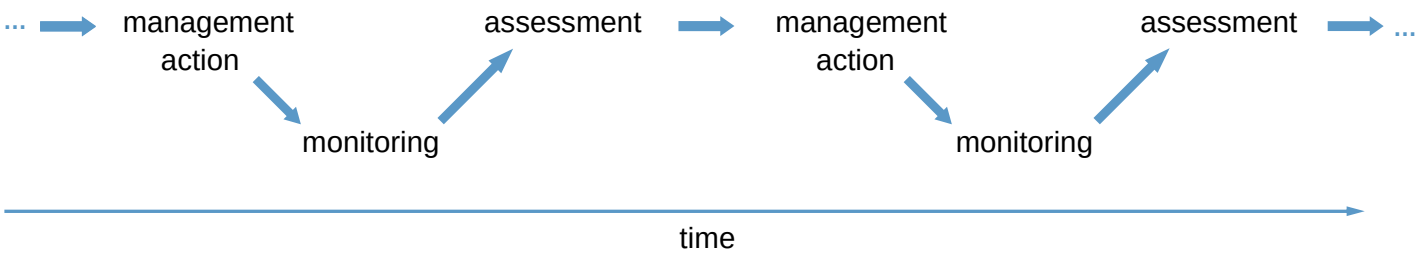



**Figure 3.3.** Iterative cycle of adaptive management. Management actions are based on objectives, resource status, and learning. Data from followup monitoring are used to assess impacts and update understanding. Results from assessment guide decision making in the next time period.

## Step 9- Key Points

- The cycle of Steps 6 through 9 is iterated until the end of the timeframe.
- Iterations can begin at any point in the cycle; however a natural entry point is with decision making.
- The direct linkage from assessment to management action in Fig. 3.3 expresses the contribution of learning to decision making, by providing information on which to base smart decisions.
- The two-step linkage from management action to assessment in Fig. 3.3 expresses the contribution of management to learning, through interventions that are useful in investigating the resource system.

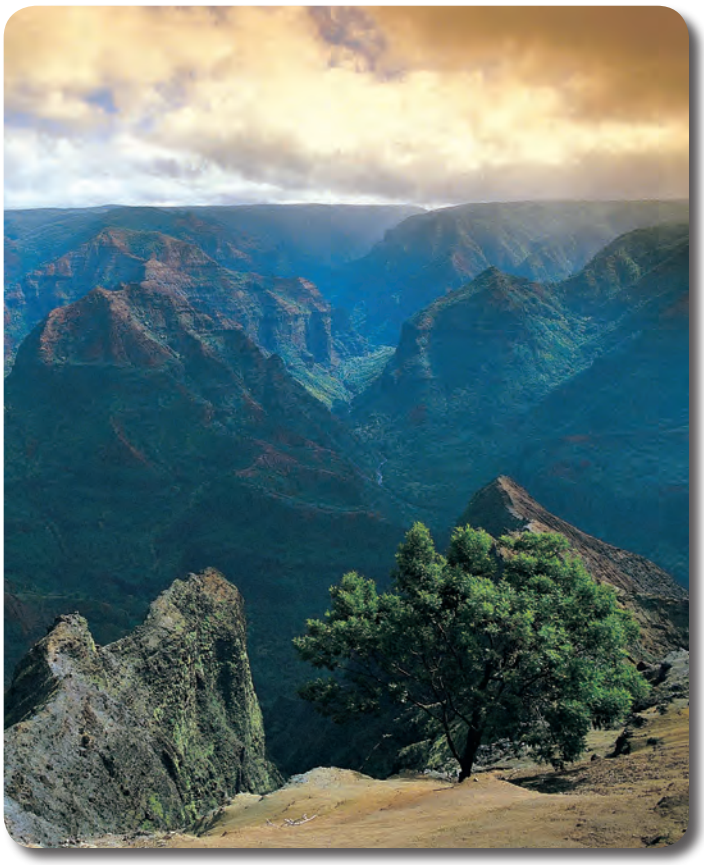
### *Technical and process learning in adaptive management*

The operational sequence described above provides a framework for implementing adaptive management, with a focus on reducing structural or process uncertainty and thereby improving management. However, adaptive management involves much more than simply following the sequence of steps outlined here.

Just as adaptive management can be described in terms of two phases, learning with adaptive management can be seen to occur at two levels. Thus, adaptive management provides an opportunity to learn not only about ecological processes, but also about the adaptive process itself. In Chapter 1, adaptive management was described in terms of a cycle that included not only monitoring, evaluation, and adjustment of management actions, but also problem assessment and design (Fig. 1.1). The latter elements focus on problem formulation, stakeholder involvement, identification of objectives, and the other elements included in the setup phase of adaptive management. In fact, it is useful to think of adaptive management not only in terms of an ongoing sequence of decision making, post-decision monitoring, and assessment as described here, but also in terms of periodic but less frequent recycling through the elements in the setup phase and adjustment of these elements as needed to account for evolving stakeholder perspectives and institutional arrangements (Fig. 3.4). The broader context of learning that focuses on the components of adaptive management as well as technical uncertainty is sometimes called “double-loop” learning (12).

In many applications of adaptive management, both kinds of learning are of key importance. For example, it can be as important to understand and track the social and institutional relations that influence adaptive management elements and stakeholder perspectives, as it is to resolve technical issues about system structure and process (54). Although the motivation of an adaptive approach is to improve resource management by reducing structural uncertainty, its success can be impeded by a failure to adapt to social and institutional changes that inevitably occur over time. Because these changes can themselves be a result of early successes in reaching objectives, it is important to recognize and if possible account for them as decision making moves forward.

The need to better understand and characterize the elements of adaptive management often becomes more pressing as the iterative process of adaptive management rolls forward. Thus, stakeholder perspectives and values can shift as the adaptive process unfolds, and previously unanticipated patterns in resource dynamics can arise that require an adjustment of objectives, alternatives, and other elements of the process. In this sense, learning about the adaptive management process extends the context of adaptive learning to include changes in institutional arrangements and stakeholder values as well as changes in the resource system.



An emphasis on both technical and process learning has important implications for the institutional framework for resource management. Many managers contend that adaptive management is simply common business practice in their organizations and that they have been using adaptive management all along (51). In fact, the use of adaptive management in resource management almost always requires a fundamental shift from the status quo. For example, it typically is necessary to rethink the nature of risk aversion that characterizes decision making in most Federal agencies, and to explicitly recognize uncertainty as a key attribute of natural resource management. Without a willingness to embrace uncertainty, adaptive management is unlikely to succeed (47).

In addition, adaptive management requires a much more open process of decision making, in which stakeholders are directly engaged and decision making authority is shared among them. It also requires that objectives, assumptions, and the other elements of the decision making process be explicit, and therefore amenable to analysis and debate. Finally, it requires a strong commitment by managers to the necessary monitoring and assessment that underlie adaptive management, not as marginal activities but as essential elements of the process. It is undoubtedly true that many, perhaps most, projects in DOI involve monitoring, and in some cases management actually considers the results of monitoring. But that by itself is a long way from structured, adaptive decision making in a learning-based environment.

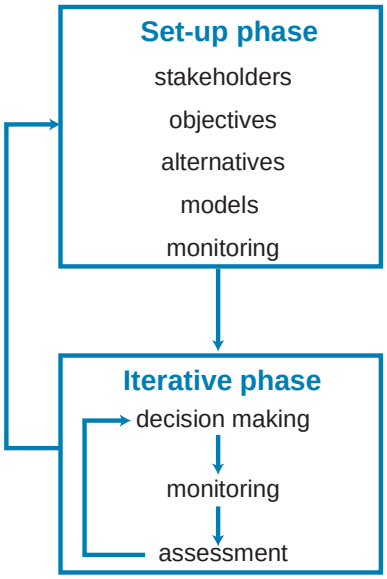
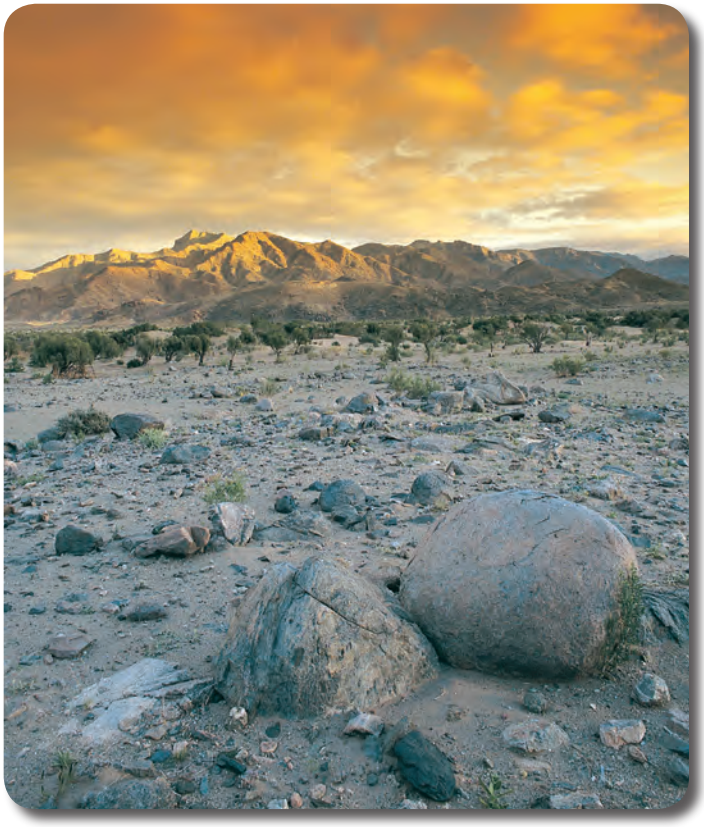



**Figure 3.4.** Two-phase learning in adaptive management. Technical learning involves an iterative sequence of decision making, monitoring, and assessment. Process and institutional learning involves periodic reconsideration of the adaptive management set-up elements.

## 3.2. Legal Considerations when Applying Adaptive Management

In addition to ecological and societal factors, a number of legal considerations influence adaptive management and potentially constrain its success. The Federal government is often criticized for the length of time it takes to plan and implement a particular action, and public concerns increase when an agency reconsiders its action and begins planning and compliance activities all over again. Well-designed and executed adaptive management strategies can help to alleviate this concern.

Agency officials should invest significant effort on legal issues at two critical stages of adaptive management: (1) at the time a decision is made to utilize adaptive management for a particular project and (2) at the time the agency seeks to adjust management decisions based on the information derived from monitoring and assessment. Knowing what federal laws and regulations require, and what limitations apply prior to agency decisions, allows stakeholders to anticipate the legal requirements and integrate them into the adaptive management process. However, agency officials should recognize that some laws and implementing regulations prescribe specific activities and assessments in ways that could limit or even preclude the use of adaptive management.



Application of adaptive management will vary depending on geographic setting, ecological complexity and participating stakeholders, as well as the specific statutory provisions authorizing and sometimes constraining actions. Some examples include:

- National Park Service Organic Act of 1916 (applicable to the National Park Service).

- Reclamation Act of 1902 (applicable to the Bureau of Reclamation).

- Surface Mining Control and Reclamation Act of 1977 (applicable to the Office of Surface Mining).

- Federal Land Policy Management Act of 1976 (applicable to the Bureau of Land Management).

As a general matter, statutes of this type impose obligations on a particular agency. In addition, a number of statutes apply to all Federal agencies and serve to either limit agency actions or require certain tasks before an agency takes action. Regulations issued by other Executive Branch agencies can also limit agency actions.

The use of adaptive management within the Department of the Interior does not alter the legal context that applies to Federal agency actions. Simply put, all of the applicable laws, regulations, and polices continue to apply to agency actions whether or not adaptive management principles are used in a particular context.

### *Statutory and other authorities that apply to Interior agencies*

The first place to look for the authorized boundaries of agency activity is in the statutory foundation or appropriations authority that supports the activity. Although few useful generalizations can be made about statutory requirements, the importance of identifying underlying authorities cannot be overstated. Employees working on an adaptive management project should understand the authority under which they are entering into the project and be sure to embark on it only when there is clear statutory authorization.

The statutes discussed here are not intended to provide an exhaustive accounting of applicable law. However, they are some key authorities that agency personnel should consider regarding adaptive management. Many other statutes such as the Clean Air Act, the Clean Water Act, and the National Historic Preservation Act may be involved in particular applications of adaptive management.

One of the benefits of clean water in the Cold River, a salmon stream in Massachusetts

Native American wickiup structures were listed in 2003, on Colorado's Most Endangered Places List by Colorado Preservation, Inc. The Wickiup Project is supported by the Bureau of Land Management, Dominquez Archaeological Research Group and the Colorado State Historic fund.

In the examples below, Departmental employees are assumed to be actively working with non-Federal stakeholders on an adaptive management project. Most projects of adaptive management involve such interactions at some level of the application.

### *Statutory authorities that apply directly to adaptive management*

***National Environmental Policy Act.*** One of the most important statutes for an agency to consider as it implements adaptive management is the National Environmental Policy Act (NEPA). The primary goal of this statute is to ensure that agency decision makers and the public recognize and account for environmental and other related impacts of proposed agency actions.

Compliance with NEPA generally requires a series of procedural steps, and certain NEPA processes involve public participation and public review and comment. In complex or controversial situations, NEPA potentially involves the preparation of a Notice of Intent to prepare an Environmental Impact Statement (EIS), as well as a Draft EIS, a Final EIS, and a Record of Decision assessing environmental impacts of major Federal actions. In less complex or controversial actions, environmental compliance often can be accomplished with a simpler Environmental Assessment (EA) that culminates in a Finding of No Significant Impact. In some cases, an action can be categorically excluded from the requirement for NEPA compliance.

The NEPA requires an EIS of proposed "major Federal actions significantly affecting the quality of the human environment." An EIS must include an analysis of alternatives to a proposed action. The activities resulting from a particular adaptive management process may rise to the level of a major Federal action requiring an EIS, and in any event they likely will need to be analyzed for NEPA compliance. Less complex or controversial actions may be addressed by a less comprehensive EA. Under NEPA, following the completion of an EA the agency will either identify significant impacts (and prepare an EIS), or prepare a Finding of No Significant Impact. Of course, some actions can be categorically excluded from NEPA's documentation requirement.

As an example, a proposal resulting from collaboration between a DOI agency and an environmental nonprofit organization might call for the nonprofit to conduct habitat improvement for a protected species. It is possible that this undertaking could be considered a major Federal action. In such a circumstance, the collaborative activities resulting in a Federal action covered by NEPA must comply with NEPA's documentation and procedural requirements. Given that many Federal actions may be challenged in Federal court, non-Federal stakeholders should be made aware of the possibility of litigation inherent in Federal actions.

An EIS incorporating adaptive management, whether as a "stand-alone" alternative or part of another alternative, needs to clearly describe how the approach would be implemented. This not only includes what types of actions are proposed initially, but also the results that are expected from monitoring and assessment, and future actions that may be implemented based on those results. Decision makers and the public must be able to see how the adaptive management approach would be implemented, including potential future actions and anticipated impacts on the environment.

One common challenge to making adaptive management work in natural resource decision making is that ongoing monitoring may reveal "new, significant information" that requires an agency to prepare a Supplemental Environmental Impact Statement. This requirement is triggered when "[t]he agency makes changes in the proposed action that are relevant to environmental concerns; or [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" (40 CFR § 1502.9 (c)). If management adaptations that could occur in light of new information are fully documented and analyzed at the beginning of a NEPA process, the need to supplement NEPA documents may be reduced. Put differently, if an EIS anticipates significant information that can arise from monitoring and assessment, the agency may not need to supplement the EIS when invoking management changes based on the newly acquired information.

*An important statute for an agency to consider as it implements adaptive management is the National Environmental Policy Act . The primary goal of this statute is to ensure that agency decision makers and the public recognize and account for environmental and other related impacts of proposed agency actions.*

***Endangered Species Act.*** The Endangered Species Act of 1973 (ESA) provides a broad, comprehensive approach to the conservation of threatened and endangered species. By Congressional direction, the ESA is administered by the U.S. Fish and Wildlife Service (FWS) and the NOAA-Fisheries (National Marine Fisheries Service). In general, the FWS deals with terrestrial and fresh water species, while NOAA-Fisheries deals with anadromous fish and marine species. As part of their administration of the ESA, these agencies:

- "List" endangered and threatened species
- Designate critical habitat for listed species
- Publish plans to identify actions needed to assist in the recovery of listed species
- Consult with other federal agencies whose actions may affect listed species
- Work with non-federal entities to develop and approve habitat conservation plans
- Work cooperatively with other nations to conserve listed species
- Administer international agreements to limit trade in endangered and listed species

Of particular relevance to Federal agencies engaged in activities that may affect listed species is Section 7 of the ESA. Section 7 enlists agencies of the Federal government to support species conservation and avoid actions that would contribute to species extinction.

Given the importance of conserving endangered and listed species, the complexity associated with protecting these imperiled species, and the impacts the ESA may have on society and agency decision making, any adaptive management program that may affect listed species or critical habitat is more likely to be successful if it involves FWS and/or NOAA early in the process. Key to efficient and effective consultation is an initial description of the range of potential adaptations and effects of those actions on listed species and their designated critical habitats. Re-initiation of consultation is far less likely to be needed if the initial consultation clearly considers the action to be adaptive and addresses the full range of possible adaptations and their associated potential effects.

In some cases involving large-scale Federal programs, consultation is appropriate at both a broad programmatic level as well as the level of individual projects or actions that may affect listed species. Careful consideration of effects and alternatives can set the stage (for example, through adoption of best management practices or design standards) for expedited consultation on later individual actions.

Agencies whose actions may affect listed species should design monitoring programs with input from FWS and/or NOAA-Fisheries. Learning by doing - the critical centerpiece of adaptive management - is particularly important in ESA situations, where cause and effect can be particularly difficult to ascertain. New information on listed species, or the effects of actions on listed species, may require re-initiation of Section 7 consultation by a Federal agency, or may trigger changes in habitat protection pursuant to approved Habitat Conservation Plans (HCP). Knowing and understanding the ESA and its requirements will be essential to successfully integrating the elements of an adaptive management program with efficient ESA procedural compliance.

Integration of adaptive management principles has been utilized by the FWS in the context of HCPs under Section 10 of the ESA. The FWS has developed guidelines regarding this aspect of HCP planning (included in the reference CD). Particular attention should be given to the issue of which party is to be responsible for any required changes in mitigation and/or minimization of "take" to listed species as a result of monitoring programs. Any effort in this regard must take into consideration the No Surprises assurances that a permittee can receive pursuant to the regulations that implement Section 10(a)(1)(B).

*The Endangered Species Act's purposes include providing a means to conserve the ecosystems upon which endangered and threatened species depend, and providing a program for the conservation of the species*

***Federal Advisory Committee Act ("FACA").*** Under FACA, Department officials may not receive advice from a group that the Department has established or that it uses (i.e., manages or controls) unless the Department complies with the provisions of FACA. The FACA requires certain actions to set up and operate a committee or similar group to provide advice to Federal officials. FACA does not require any particular outcome regarding the substance of advice on a particular matter. Rather, it establishes a number of actions and approaches to ensure balanced consideration and input. These actions include filing a charter, providing public notice of meetings in the Federal Register, and making advisory committee information publicly available.

Federal officials who receive advice from non-federal stakeholders should be aware of FACA's potential applicability. However, FACA does not apply to every situation in which a Departmental official receives advice, but only to those situations in which the advice comes from a group that the Department has established or utilized. This means that FACA does not apply to advice received from individuals, even in a group setting (such as "town hall" meetings). Nor does it apply to advice received from preexisting groups, or groups that the Government neither manages nor controls. It does not apply to groups that simply exchange facts or information; or groups that are authorized to carry out operational functions; or groups consisting of only Federal, state, local, and tribal government employees exchanging views, information, or advice on programs with shared intergovernmental responsibilities. Finally, under some circumstances groups may be exempted from the requirements of FACA by another statute (such as the ESA for Recovery Implementation Teams). For more information on FACA, employees should consult FACA regulations in 41 C.F.R. Part 102-3.

### *Funding authorities*

***Annual Appropriations Acts and Funding***. Agency activities cannot be undertaken without available funds that are allocated for a particular purpose. Occasionally, Congress may insert specific limitations in annual appropriations acts that could affect agency activities. For example, Congress may enact a provision stating that no Federal funds may be spent to map natural gas deposits off the coast of California or to study decommissioning of the Glen Canyon Dam. In these situations, any Departmental effort to map deposits or undertake such a study would be impermissible, even if a non-Federal stakeholder thought the activities would assist a particular adaptive management process or a non-Federal partner donated the necessary resources and/or data for the efforts.

***Antideficiency Act.*** The Antideficiency Act contains a series of controls over the use of Federal appropriated funds to ensure that Federal agencies "pay as they go." Government officials are prohibited (without specific authority) from making payments, or committing the United States to make payments at some future time, unless there are available agency funds to cover the cost in full. The Antideficiency Act applies to applications of adaptive management just as it does to all other Federal activities. In essence, no agreement should be entered into that commits an agency to the payment of funds in the future, in advance of available appropriations to fund activities under the agreement. For example, an agreement by an agency that commits $100,000 in grant funds to a particular organization for each of the next 5 years will likely be improper under the Antideficiency Act, unless there are sufficient agency funds that are available for the grant for more than one year.

### *Other relevant statutes and authorities*

***Administrative Procedure Act (APA).*** The APA provides a procedure by which Federal agency actions may be challenged in court. Although there are several ways to challenge an agency action under APA, the most commonly employed is the claim that an agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." This standard applies equally to adaptive management projects as to other activities, so agency decisions in a particular adaptive management application may ultimately be reviewed by a court. To survive a court challenge, agency decisions must therefore be rational, reasonable, and carefully articulated.

APA challenges are usually decided on the basis of the administrative record (the materials upon which the agency officials relied in taking action). Challenges to activities in adaptive management applications are no different. Departmental employees must therefore ensure that their decisions and actions are based on, and supported by, a complete and thoroughly documented administrative record. Finally, the APA may also provide the basis for challenges under NEPA, the ESA, and other statutes.

***Substantive Statutory Authority.*** Often a statute that authorizes an activity will also contain specific limitations. For example, a statute that authorizes the Secretary to establish a wildlife refuge in cooperation with a State may also require the Secretary to ensure that State laws apply on the refuge. Conversely, Congress may enact statutes that forbid a particular activity. For example, Congress has forbidden Federal agencies from creating business corporations.

***Lobbying Activities.*** Under 18 U.S.C. § 1913 and related authorities, most Department employees may not expend appropriated funds for "grass roots" lobbying that is designed to influence a member of Congress or official of any government (Federal, State, local, tribal) regarding his or her position on legislation. That is, Federal employees may not engage in lobbying. This restriction prohibits encouraging a stakeholder to undertake lobbying activities in support of the Department.

***Freedom of Information Act.*** The Freedom of Information Act (FOIA), codified in 5 U.S.C. § 552, provides members of the general public potential access to any information created or obtained by the Department and under the Department's control at the time of a FOIA request. Department personnel should keep in mind that documents generated during adaptive management activities will generally be agency records that are subject to release under the FOIA. However, the Department may withhold documents from the public that fall within one of nine specified FOIA exemptions. Agency personnel will want to consider how they intend to gather, store and publish information developed as part of the adaptive management process, and work with their agency's FOIA offices when responding to requests for information.

***Data Quality Act.*** Although relatively new, the Data Quality Act (DQA) is increasingly affecting the work of Interior agencies. Passed in 2001 as part of the Treasury and General Government Appropriations Act, the DQA directs the Office of Management and Budget to publish guidelines applicable to Federal agencies, and provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies. Each agency should assess the applicability of the DQA to new or ongoing adaptive management projects.

***Governmental Integrity.*** Because agency decisions, whether products of adaptive management or not, will only stand up if they comport with the law and are not "arbitrary and capricious," agency officials must constantly work to ensure that the agency's decisions are supportable based on the information that is available to the agency. In carrying out agency activities, Departmental employees should always act in an unbiased, fair, and equitable manner, so as to ensure that the public will not have cause to question the integrity of the Federal government. All Federal employees should endeavor to act impartially and to avoid giving preferential treatment, or the appearance of preferential treatment, to any private entity.

### *Making Adaptive Management Work: The Importance of Integrating Adaptive Management and NEPA*

NEPA serves as a pre-decisional requirement and analytical process with the goal of ensuring that both the public and Federal decision makers are fully aware of the potential impacts of a discretionary Federal action. Expanding the NEPA framework to accommodate the iterative, data-driven process of adaptive management requires the integration of learning-based strategies into the existing framework of NEPA requirements and the implementing regulations. Of course, compliance with other environmental statutes, regulations, and Executive Orders is also necessary.

Federal agencies are encouraged to use adaptive management as part of the NEPA planning process, particularly in circumstances where long-term impacts are uncertain and informed decisions in the future will depend on monitoring and assessment at that time. Any adaptive management alternatives in an Environmental Impact Statement can be crafted to allow the necessary flexibility for strategy adjustment as learning advances through monitoring and assessment. Agencies are encouraged to build this flexibility into their management alternatives and NEPA compliance activities. Training of NEPA practitioners in this important environmental concept is paramount.

Because NEPA analysis and compliance is procedural and predictive, and includes the evaluation of "all reasonable alternatives," it is important to include a sufficiently broad range of management options to ensure a comprehensive environmental analysis and a "NEPA coverage" that is adequate for whatever contingencies are anticipated. The idea is to satisfy the NEPA requirements for scientific analysis of potential impacts, and provide full disclosure of those impacts. Thoughtful and carefully structured alternatives should avoid the triggering of additional NEPA compliance later.

Alternatively, another approach to NEPA compliance that has proven successful for adaptive management programs is to prepare a "programmatic" EIS at the start, which broadly covers the likely range of actions that may be taken under the particular adaptive management program. Later, any NEPA compliance needed for subsequent shifts in the management actions as a result of the adaptive management process can then "tier" off of the initial programmatic EIS, saving considerable time and work.

Where appropriate, greater use of Environmental Assessments could help to integrate NEPA and adaptive management, especially if environmental analyses will be needed subsequent to an initial EIS and impacts are not expected to be significant. An Environmental Assessment is generally much easier to prepare than an EIS.

If an agency is constantly undergoing NEPA compliance and documentation, it may be because the original NEPA process failed to fully consider a broad range of potential adaptive management modifications. Frequent follow-up NEPA compliance can erode the public's perception of the integrity of the process, and impede the ability to react to new, relevant information. NEPA is first and foremost a public process, and its credibility and successful implementation is predicated on the public's perception that it is transparent and involves full disclosure of the potential environmental effects of Federal actions.

Coyote Gulch

## 3.2 Key Points

- Adaptive management must be integrated with all existing legal obligations of the agency; it is not a replacement for environmental compliance.

- Adaptive management must comply with NEPA and other environmental laws. Integration of adaptive management and other legal obligations requires thoughtful "up-front" planning, and involves an investment of time and resources by the agency and other stakeholders.

- Integrating environmental review procedures with adaptive management requires consideration of the range of adaptive actions and attendant environmental effects that can reasonably be anticipated at the time of the environmental review.

- The management alternatives and effects considered in an adaptive management application must be reviewed in light of the relevant environmental laws and regulations, so that environmental compliance applies not only for the initial action, but also for adaptive redirections that may be needed in the future.

- For some adaptive management applications, it may be appropriate to assess environmental effects of future adaptive actions on a case-by-case basis using streamlined environmental assessments or informal consultations. Such an approach may serve to strengthen the case for compliance when uncertainty exists regarding the environmental effects of future adaptive actions.

- Key to successful integration of NEPA and adaptive management is a well planned and thorough up-front consideration of the range of potential actions and their effects, so as to ensure that future actions and their effects are within the scope of the initial analysis and do not require subsequent environmental analysis.

# Chapter 4: When is Adaptive Management Successful?

4

Chapters 1 and 2 address the context and conditions for adaptive management to be applicable to resource management, and Chapter 3 describes adaptive management in operational and legal terms. In these chapters we referred to the successful implementation of adaptive management without ever explicitly defining success. Here we offer a definition, criteria, and steps to promote successful implementation.

## 4.1. Recognizing Success in Adaptive Management

In general, the implementation of adaptive management is defined as successful if progress is made toward achieving management goals through a learning-based (adaptive) decision process. This definition contains two essential elements. First, it requires progress toward achieving objectives, a primary indicator of success with any management strategy, whether adaptive or not. Second, it requires learning-based management, as described in the nine-step operational sequence in Chapter 3. Specifically, stakeholder involvement, an effective monitoring program, and agreed-upon objectives, management alternatives, and models must be integrated into an iterative learning cycle (see Fig. 3.4). Of course, the decision making process must be framed in a context of applicable laws, authorities, and regulations.

Based on this definition, we suggest the following four criteria for recognizing success in adaptive management (Fig. 4.1):

- Stakeholders are actively involved and committed to the process.
- Progress is made toward achieving management objectives.
- Results from monitoring and assessment are used to adjust and improve management decisions.
- Implementation is consistent with applicable laws.

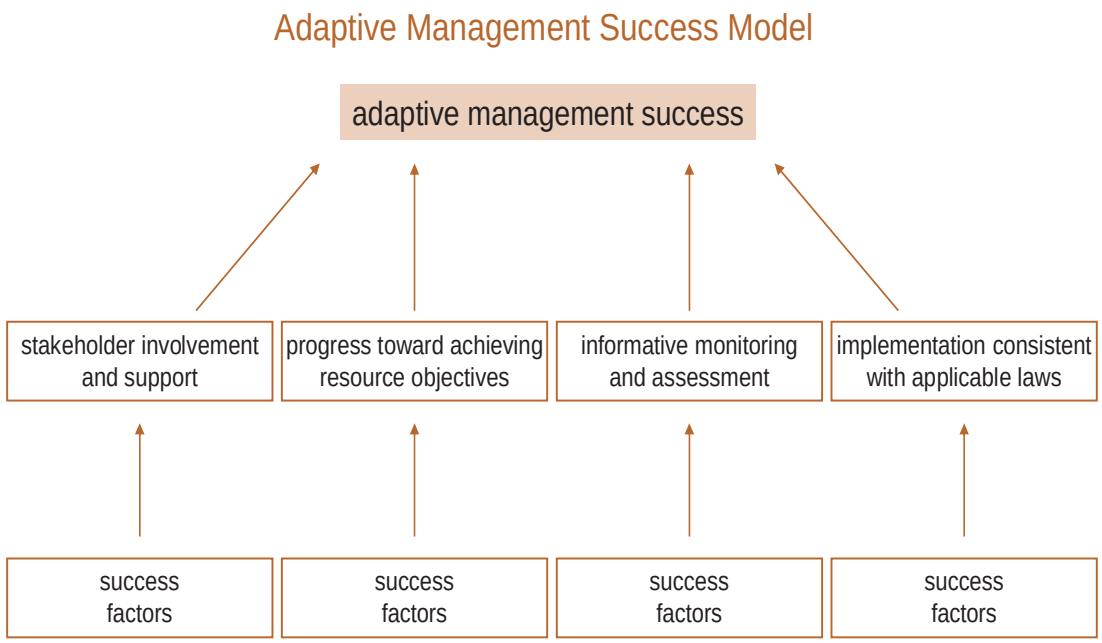



Figure 4.1. Adaptive management success model, with four success criteria. Success factors for each criterion are addressed by a series of questions that help practitioners increase the likelihood of success.

These criteria integrate the structural elements and processes described in the preceding chapters. They are interrelated and interdependent, and should be viewed collectively as indicators of success.

For an adaptive management project to be successful, all four criteria must be met over the project timeframe. For example, an adaptive management project is not considered fully successful if stakeholders do not see the resource management process as legitimate. Likewise, results from monitoring and assessments must be used to inform adjustments in management practices for it to be fully successful.

### *Stakeholders are actively involved and committed to the process*

Broad stakeholder involvement is critical for adaptive management success. Recall from Chapter 3 that engaging stakeholders is one of the key steps in adaptive management. Ideally, stakeholders are engaged in every aspect of adaptive management, from the initial problem formulation to the identification of objectives and the design of monitoring and assessment. The fact that stakeholders play a role in all aspects of the process argues for singling out stakeholder involvement as a key success criterion.

Including stakeholders in the adaptive management process reinforces stakeholder perceptions of adaptive management as a legitimate process, which in turn encourages cooperation and reduces the likelihood of conflict. Stakeholder involvement in problem identification, process design, monitoring and assessment, and other elements of the adaptive management process builds support for the process and provides a foundation for learning-based resource management. It also provides opportunities for resource managers to obtain additional information about the natural system and priorities for its management before decisions are made. Conversely, a lack of stakeholder involvement can by itself cause the process to fail.

### *Progress is made toward achieving management objectives*

In structured decision processes, clear and measurable objectives guide decision making and serve as metrics for assessing management performance. Because adaptive management by design pursues management benefits as expressed in the management objectives, progress toward achieving objectives is a natural criterion of success.

Two points about objectives are emphasized here. First, the objectives in natural resources management often are multidimensional, and thus involve tradeoffs. Improving an outcome associated with one objective may involve tradeoffs with outcomes associated with other objectives. When multiple management objectives are identified, it is important to recognize and account for the relationships among them, so that potential tradeoffs can inform decision making. In this way, consistent and achievable resource management goals and thresholds can be established.

Second, it is important to recognize that management objectives may change. In many cases, success in attaining objectives can be an ongoing process that involves refinement of objectives as understanding accumulates and stakeholder perspectives change. That is, the adaptive management system is itself dynamic, including its objectives. Adaptive management needs to include not only the cyclic evaluation of project performance, but also a periodic reassessment of the project objectives.

### *Results from monitoring and assessment are used to adjust and improve management decisions*

The accumulation of understanding and subsequent adaptation of management strategy depends on feeding monitoring and assessment results back into the decision making process. Monitoring and assessment efforts should be designed to ensure that key resource parameters are adequately measured and appropriately focused, so as to contribute to achieving success. In Chapter 3 these key process elements were seen to factor directly into the operational sequence that defines adaptive management.

Here we emphasize the importance of monitoring resource responses and using the resulting information to assess system models, update their confidence measures, and reduce system uncertainty. Scientists, managers, and stakeholders should collaborate in an interdisciplinary assessment of what is known and what is learned about the system being managed. Success in adaptive management ultimately depends on effectively linking monitoring and assessment to objective-driven decision making.

### *Implementation is consistent with applicable laws*

It is almost axiomatic that implementation of adaptive management must be consistent with applicable laws to be considered successful. The use of adaptive management in a manner that is not consistent with applicable laws will eventually lead to distractions from the project objectives, or to a breakdown in trust among stakeholders, or to a litany of official – and unofficial – sanctions.

Ensuring that an adaptive management application complies with applicable laws, regulations, and policies can be challenging because of the many legal considerations and complexities that may be involved. Thoughtful, detailed planning and constant attentiveness to the requirements of laws, regulations, and policies are needed to ensure the success of an adaptive management project.

This criterion should not be assessed in isolation. In large measure, success with the previous criteria will affect stakeholder assessments of whether an adaptive management project remains in compliance with applicable legal considerations. For example, if serious disagreements persist among stakeholders regarding the appropriateness of monitoring protocols and results, one or more of the stakeholders may challenge the validity of the program's results. This in turn can lead to withdrawal of stakeholder support, loss of continued funding, and even litigation.

### *Using the success model*

A key success metric that adaptive management shares with all management strategies is progress toward the achievement of management objectives. As an adaptive management project moves forward in time, it should be possible to compare management performance against expectations, to get some idea of the progress made up to that time in achieving objectives. In the absence of at least some indication of progress over a reasonable period, there is little justification for continuing a project in its current form.

All four success criteria need to be met for successful implementation of adaptive management. They should be considered when initially developing an adaptive management project, and reviewed periodically over the life of the project to evaluate project implementation and assess the likelihood of achieving objectives. In fact, the success criteria can themselves be used adaptively, to determine where changes are needed in order to achieve success.

The success model provides a framework for both technical and process learning, as described in Section 3.1. The focus is on adaptation not only at the technical level, through an iterative application of decision making, monitoring, and assessment, but also at the institutional and process level, through periodic assessments of stakeholder perspectives, management objectives, and other process elements. The successful application of adaptive management potentially involves learning and adaptation at both levels. The following section includes questions that can be useful in implementing and evaluating the success of an adaptive management project.

Avian Influenza Sampling Project 2006

USGS scientist is measuring various water-quality conditions in Holes Creek at Huffman Park in Kettering, Ohio.

## 4.2. Key Questions for Successful Implementation

The following questions can be used to increase the likelihood of successful adaptive management, and to evaluate progress in achieving objectives. The questions address each of the criteria identified in Section 4.1 and are tied to the operational steps discussed in Section 3.1 and shown in Box 4.1. The questions should be considered throughout the timeframe of an adaptive management project, to ensure that success is continually considered and evaluated as the project progresses. A particular adaptive management project may not be able to address all of the issues outlined in the following questions. However, the questions encompass an important set of issues that should be considered, so as to increase the likelihood of success.

**Box 4.1 Adaptive Management Operational Steps**

***Set-up phase***

- *Step 1 - Stakeholder involvement*
  Ensure stakeholder commitment to adaptively manage the enterprise for its duration
- *Step 2 - Objectives*
  Identify clear, measurable, and agreed-upon management objectives to guide decision making and evaluate management effectiveness over time
- *Step 3 - Management actions*
  Identify a set of potential management actions for decision making
- *Step 4 - Models*
  Identify models that characterize different ideas (hypotheses) about how the system works
- *Step 5 - Monitoring plans*
  Design and implement a monitoring plan to track resource status and other key resource attributes

***Iterative phase***

- *Step 6 - Decision making*
  Select management actions based on management objectives, resource conditions, and enhanced understanding
- *Step 7 - Follow-up monitoring*
  Use monitoring to track system responses to management actions
- *Step 8 - Assessment*
  Improve understanding of resource dynamics by comparing predicted vs. observed change in resource status
- *Step 9 - Iteration*
  Cycle back to Step 6 and, less frequently, to Step 1

## Step 1- Stakeholder involvement

Two key aspects of stakeholder involvement are emphasized here. First, participation by stakeholders is essential if only because stakeholder perceptions of adaptive management as a legitimate process can promote cooperation and reduce the likelihood of conflict. Second, including stakeholders in the process provides opportunities for resource managers to obtain additional information about both the natural system and stakeholder values and priorities before decisions are made. Involving stakeholders builds support for the process and provides a foundation for learning-based resource management.

Key questions to consider when involving stakeholders in an adaptive management project include:

- Has a systematic process been developed that facilitates effective participation by stakeholders?
- Have key stakeholders been identified?
- Have agreed upon lines of communication been established and is their importance to successful adaptive management processes understood?
- Are stakeholders committed to and involved in the adaptive management process including the monitoring and assessment program?
- Is the adaptive management process able to adapt to changes in stakeholder and public viewpoints?

## Step 2- Objectives

Objectives in adaptive management play important roles in decision making, evaluation, and learning. These roles are enhanced by the articulation of clear, measureable, and agreed-upon objectives. Because they can change through time as the resource system changes and stakeholder values evolve, it is useful to revisit objectives periodically.

Keeping the following questions in mind will increase the likelihood that decision making will be guided by resource management objectives:

- Have explicit and measurable management objectives been identified and developed?
- Are the management objectives achievable and sustainable?
- Have performance metrics relating to the management objectives been developed?
- Has a system of monitoring and assessment relevant to the management objectives been developed and implemented so that progress in meeting the objectives can be tracked?
- Have tradeoffs among management objectives been considered and are they understood?

## Step 3- Management actions

The set of potential management actions determines the range of management flexibility for an adaptive project, and influences learning rates as well as progress in achieving management objectives. Learning is promoted by a wide range of management alternatives, but hampered by alternatives that differ only marginally. As with other components of an adaptive management project, the acceptable range of management options can change through time, as stakeholder perspectives and resource conditions evolve, legal requirements change, and new information becomes available.

Key questions about the set of management alternatives in an adaptive management project include the following:

- Has a range of potential management actions been developed?
- Have the specific tasks to implement the management alternatives been identified?
- Is the range of potential actions appropriate for the timeframe under which changes are likely to occur?
- Can the set of management alternatives be adjusted through time if needed?

## Step 4- Models

Models serve as expressions of ecological understanding, as engines for deductive inference, and as articulations of resource response to management and environmental change. They also help bring together scientists, managers, and other stakeholders in a joint assessment of what is known about the system being managed, and facilitate an interdisciplinary approach to understanding through monitoring and assessment. It is important to keep the many roles of models in mind as an adaptive management project is implemented.

The following questions relate to the models used in an adaptive management project:

- Are the hypotheses underlying the strategies for resource management expressed as testable models?
- Have explicit links between management actions and resource dynamics been incorporated into the models?
- Are the ecological/resource processes that drive resource dynamics understood?
- Are the relevant environmental factors incorporated into the models?
- Are the models calibrated with available information?

## Step 5- Monitoring plans

The use of objectives to guide decision making depends on linking monitoring and assessment results with the decision making process. Both monitoring and assessment should be designed to ensure that resource parameters are adequately measured and appropriately focused on relevant performance indicators. Effective and useful monitoring is required for the hypothesis testing that leads to the reduction of uncertainty that is key to adaptive management.

Important questions about the monitoring plan for an adaptive management project include the following:

- Will the monitoring plan support the testing of alternative models and measurement of progress toward accomplishing management objectives?
- Is it clear what monitoring data need to be collected to estimate the relevant resource attributes?
- Has the level of accuracy that is needed been identified?
- Are commitments among managers, scientists, and other stakeholders in place to sustain an ongoing monitoring and assessment program?
- Will meaningful and useful data and information be available within timeframes that allow for adaptive decision making?

## Step 6- Decision making

An adaptive management strategy identifies actions at each point in time, with strategy implementation at a particular time based on resource status and understanding. The strategy typically evolves through time, as learning accumulates and the resource system responds to management actions.

Key questions about iterative decision making in an adaptive management project include the following:

- Is it clear how decisions will be made?
- Are decisions at each point in time based on the current status and understanding of the resource?
- Are decisions being guided by management objectives?
- Are stakeholders informed and consulted before decisions are made or changed?

## Step 7- Follow-up monitoring

The effects of decision making are tracked with post-decision monitoring, and the data collected are used to gauge progress in meeting objectives and improve ecological understanding. Ideally, post-decision monitoring data can be folded into analysis/assessment before the next decision point, so that decision making at that time can take advantage of updated information and understanding.

Key questions about follow-up monitoring in an adaptive management project include the following:

- Are the analysis needs understood?
- Is monitoring conducted on a timely basis?
- Is monitoring targeted to system attributes that are useful for evaluation and learning?
- Are monitoring data collected and managed so that they are available and easy to access?
- Can the monitoring data be used to update the measures of model confidence?

## Step 8- Assessment

The information from monitoring is used to evaluate management, improve understanding, and guide decision making. As noted in Chapter 3, these functions are promoted by the estimation of resource parameters and the comparison of these estimates against model-based predictions.

Key questions about analysis and assessment in an adaptive management project include the following:

- Have the expected impacts of alternative management strategies been evaluated?
- Is it clear how results are to be understood and interpreted?
- Have thresholds that indicate a change in management been recognized?
- Have the action(s) to be taken when a threshold is reached been identified?

## Step 9- Iteration

The adaptive cycle of decision making, post-decision monitoring, and analysis/assessment (Fig. 3.3) leads to improved understanding as well as improved management. Periodic but less frequent cycling through the components of an adaptive management application (Fig. 3.4) allows for adjustments as stakeholder perspectives, institutional arrangement, and resource conditions evolve.

Key questions about iterative feedback in an adaptive management project include the following:

- Are management actions and decisions reviewed frequently based on monitoring and assessment?
- Have incentives been developed to encourage experimentation and learning?
- Have resource management alternatives been revisited and/or modified over time?
- Has uncertainty related to resource dynamics and the impacts of management actions been reduced through learning over time?
- Are the targets identified in the performance metrics likely to be achieved within the specified timeframe?

### *Legal considerations*

Because of its scope and complexity, the legal framework for an adaptive management project can be confusing, and it is not always obvious to managers and practitioners which legal considerations to focus on. Among other things, this suggests the usefulness of engaging members of the DOI Solicitor's Office early on in an adaptive management project.

Key questions about legal considerations for an adaptive management project include the following:

- Are the applicable resource management laws and regulations understood by managers, scientists, and other stakeholders?
- Have steps been taken to comply with applicable laws and regulations?
- Has a process been developed to focus on compliance throughout the project life?
- Is the process in compliance with specific legal mandates?

## 4.2 Key Points

- ❖ Adaptive management allows managers to determine systematically whether management activities are succeeding or failing to achieve objectives.
- ❖ An adaptive management project is recognized as successful if (1) stakeholders are involved and committed to the process; (2) progress is made toward achieving management objectives; (3) results from monitoring and assessment are used to adjust management decisions; and (4) implementation is consistent with applicable laws.
- ❖ The implementation of adaptive management can be facilitated by considering a series of questions related to the success criteria and the operational steps.

*Rather than relying on anecdotal information about resource status, managers can use monitoring and evaluation adaptively to make smart decisions*

# Chapter 5: Other Operational Issues

5

In the course of writing this technical guide, contributors and reviewers raised a number of important issues that do not fit naturally into other chapters, but nevertheless merit discussion. Because no document can address all the issues that might arise in adaptive management, DOI bureaus and offices may wish to develop their own planning and implementation guidelines, tailored to specific legal and institutional contexts and focused more directly on relevant authorities.

## 5.1. Uses of Information in Natural Resource Management

When considering the application of adaptive management, it is important to account for both learning and progress in achieving management objectives, as well as the possible tradeoffs between them. As indicated earlier, learning in adaptive management occurs through the comparison of model-based predictions against information from monitoring. The role played by monitoring, and the information produced from monitoring, is essential in adaptive management.

Several different approaches to resource management can be distinguished, depending on the relative emphases on learning and management objectives (38). Management approaches can range from an exclusive focus on management objectives with no concern for information and learning, to an exclusive focus on learning with little regard for achieving management objectives (60). The most extreme example of the latter is the use of management in a rigorously designed experiment, where the goal is to maximize the precision of contrasts among management treatments.

### *Management in the absence of systematic monitoring*

In this situation, decision making is loosely focused on management objectives, and is based on prior experience, intuition, expert opinion, etc. Monitoring and assessment are not used systematically in decision making, so there is little or no opportunity for learning. This situation occurs more frequently than many believe. For example, managers often feel that their understanding of a resource system is sufficient for them to make smart decisions, and anecdotal information about resource status is all that is needed to inform those decisions.

### *Management based on resource status*

Here the focus of decision making is on achieving management objectives, with little or no recognition of uncertainty in the decision making framework. Monitoring and assessment focus primarily on resource status, rather than the understanding of ecological processes. This approach is sometimes misidentified as adaptive management, presumably because the measures of resource status obtained through monitoring are considered in management actions. A great many multi-year resource applications are of this kind. However, few of these applications specifically focus on learning about the processes that control system dynamics.

### *Passive adaptive management*

In this case uncertainty is recognized in the decision making framework, but the focus is on the achievement of management objectives, with learning as an untargeted byproduct. Ongoing monitoring programs focus on resource status as well as other system attributes that are useful for improved understanding through time, and assessment produces estimates of resource attributes that are used for learning. Because decision making is not focused specifically on learning, the rate of learning is likely to be substantially lower than with a more proactive approach.

### *Active adaptive management*

Decision making involves the active pursuit of learning, either through experimental management that focuses directly on learning, or quasi-experimental management that focuses simultaneously on learning and achievement of management objectives. Both approaches anticipate the effect of management on the rate of learning, and both are included under the rubric of “management by experiment.” Monitoring focuses on resource status as well as other system attributes needed to improve understanding through time, and assessment produces estimates of resource attributes that can be used for learning.

It should be emphasized that both active and passive adaptive management utilize management interventions in a learning process. The key distinction between the two approaches is the degree to which decision makers anticipate the influence of management on learning, and the degree to which management is used proactively to accelerate the rate of learning.

Figure 5.1 orders the management approaches described above with respect to their emphases on learning. Several points can be made. First, adaptive approaches to management place a greater emphasis on uncertainty and learning than non-adaptive decision making. Second, non-adaptive management is oriented solely on management objectives, whereas adaptive management considers learning as well. Third, passive adaptive management places a stronger emphasis on learning than non-adaptive management. As a general rule, it makes little sense to manage adaptively to reduce uncertainty, if uncertainty is not at issue in the management problem. When uncertainty does limit effective management, there often is substantial value in managing adaptively (see Section 2.1 for additional discussion on this point).

*As a general rule, adaptive management is most useful when the consequences of management are uncertain, but objectives are clear and the potential for management intervention is high.*

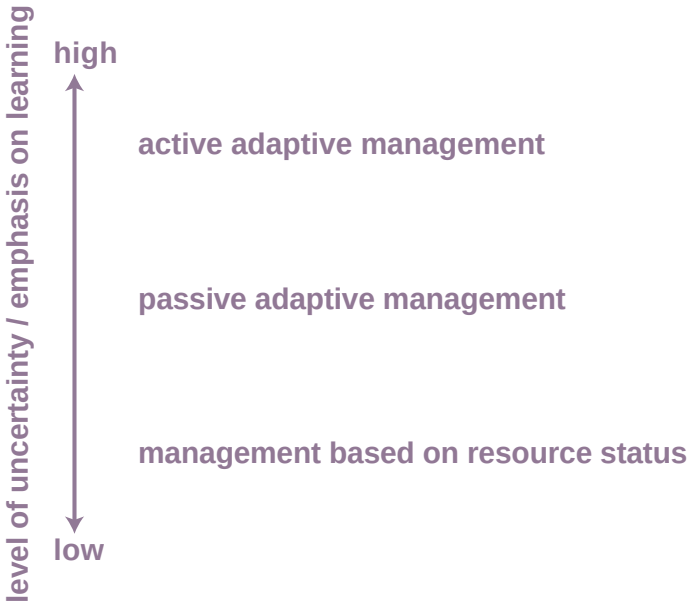



**Figure 5.1.** Priorities in different management approaches. Not shown is management in the absence of monitoring, which devalues learning and focuses only loosely on management objectives.

## 5.2. Accounting for Uncertainty in Adaptive Management

An important concern is how to represent and account for uncertainty in applications of adaptive management (61,62). At a minimum, four sources of uncertainty influence the management of natural resource systems.

***Environmental variation*** is the most prevalent source of uncertainty, and is largely uncontrollable and possibly unrecognized. It often has a strong influence on natural resource systems, through such factors as random variability in climate.

***Partial observability*** refers to uncertainty about resource status. An obvious expression of partial observability is the sampling variation that arises in resource monitoring.

***Partial controllability*** expresses the difference between the actions targeted by decision makers and the actions that are actually implemented. This uncertainty typically arises when indirect means (for example, regulations) are used to implement a targeted action (for example, setting a harvest or stocking rate), and it leads to the possible misrepresentation of management interventions and thus to an inadequate accounting of their influence on resource behavior.

***Structural or process uncertainty*** concerns a lack of understanding (or lack of agreement) about the structure of biological and ecological relations that drive resource dynamics.

Environmental variation, partial observability, partial controllability, and structural uncertainty all limit a decision maker's ability to make informed management decisions (Fig. 5.2). Special emphasis is given in adaptive management applications to structural or process uncertainty. However, the other forms uncertainty also can be incorporated in an adaptive management project, depending on their importance. For example, a typical approach to environmental variation is to include environmental conditions in the resource models in an adaptive management project (Fig. 5.2), with probabilities assigned to different values of the relevant environmental variables. In this way model behaviors will reflect environmental variation, as will the projected responses to management actions. Environmental variation therefore ramifies through the decision making process, as projected responses to management guide the selection of management actions.

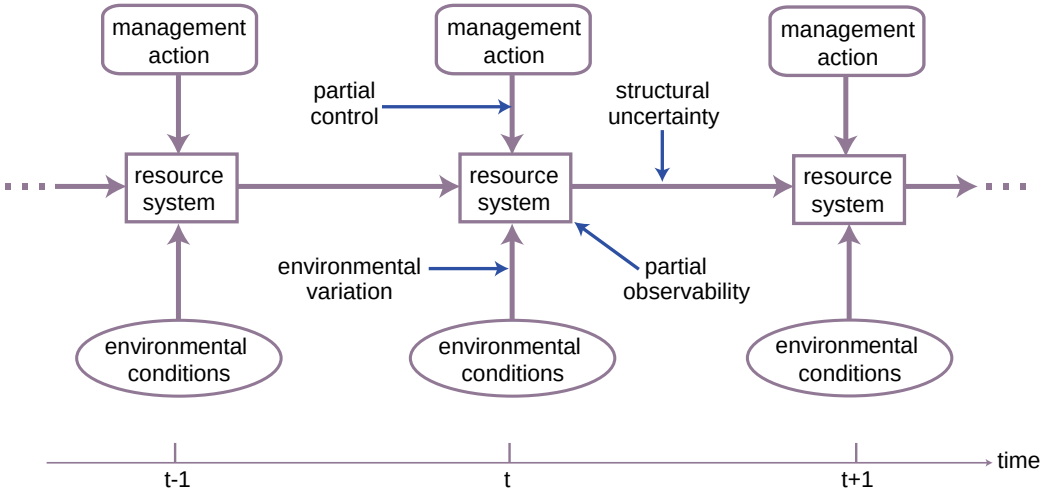



**Figure 5.2.** Uncertainty sources in natural resource management. Partial control limits the influence of management actions. Environmental variation affects resource system status and dynamics. Partial observability limits the recognition of system status. Structural uncertainty limits the ability to characterize system change.

## 5.3. The Measurement of Learning

Much has been said about learning in the preceding chapters, but questions remain about how learning actually is achieved and recognized. In Chapter 3, uncertainty was described in terms of different hypotheses about how a resource system responds to management actions, along with models imbedding these hypotheses and their associated measures of confidence. As evidence accumulates through monitoring, confidence grows in the models (and their associated hypotheses) that accurately predict responses to management, and confidence declines for models that are poor predictors. It is through the sequential comparison of predictions against monitoring data that the adequacy of a hypothesis about biological and ecological processes is gradually revealed. A comparison of hypothesis-based predictions against evidence is an essential feature of scientific investigation, and a key reason why adaptive management is described as "science-based."

Questions remain about possible mechanisms for updating the confidence in a particular hypothesis Generically, at each point in time one can use a measure of the difference between the response predicted by a model and the response estimated with monitoring data. A small difference indicates a good fit for the model, and a large difference indicates a poor fit. These differences can be calculated for each model after each post-decision monitoring event, and used to update confidence levels of the models through time. Depending on the desired rigor, an updating protocol can be fairly simple or technically complicated (63).

## 5.4. Learning Organizations

Learning in adaptive management derives from management actions, and is used in turn to inform subsequent actions. But many important issues about how best to facilitate learning are framed in terms of adaptive institutional arrangements, structures, and processes—features that are often lacking in traditional management (64). Despite frequent assertions about the use of adaptive management and the depiction of learning as a key element in applications, there has been limited progress in making adjustments to promote learning institutionally (48).

The notion of technical and process learning bears directly on the concept of learning-based organization, the institutional framework for adaptive management. At the heart of both an adaptive management project and the learning-based organization that supports it is the explicit recognition of uncertainty as a key attribute of natural resource management. Indeed, adaptive management is not feasible unless the relevant management institutions have the capability and willingness to embrace uncertainty (47). Among other things, embracing uncertainty means recognizing different views of a managed system, as well as a direct involvement of stakeholders who have different perspectives, and a commitment to shared decision making that allows uncertainty to be reduced.

At issue here is an organizational structure and context that can promote and facilitate an adaptive approach to resource management. Attributes of a learning organization include the following:

- acknowledgement that the world is uncertain and that failure to predict outcomes accurately is common.
- recognition of the importance of training people in group interactions and collaboration.
- positive reinforcement and rewards for experimentation and learning.
- recognition that surprises and even crises can be opportunities for learning (65).

In fact, many observers think that the major challenges facing adaptive management are fundamentally institutional (8). Institutions are built on major premises and long-held beliefs that are deeply imbedded in educational systems, policies, and norms of professional behavior (66). Yet Senge (4) argues that a learning organization is "… where people continually expand their capacity to create the results they truly desire, where new and expansive patterns of thinking are nurtured, where collective aspiration is set free, and where people are continually learning to see the whole together." There is a natural tension between the tendency of large, long-standing organizations to maintain a strong institutional framework for thinking and decision making, and the need in adaptive management for an open, collaborative approach that recognizes alternative perspectives, embraces uncertainty, and utilizes participative decision making (67).

Structuring a learning-based adaptive organization can be handicapped by a pervasive belief that adaptive management does not constitute a significant departure from the past, but is only a process of adjusting over time (51). One consequence is that little attention is given to the institutional barriers to its implementation, and little effort is expended on the redesign of organizational structures and processes to accommodate an adaptive style of management. At a minimum, it is necessary to rethink the notions of risk and risk aversion, and to promote conditions that encourage, reward, and sustain learning by individuals.

## 5.5. Realistic Expectations for Adaptive Management

Adaptive management is designed to produce gradual improvements in management through a stage-wise process that promotes incremental learning. However, there is nothing prescriptive in the notion of adaptive management about the length of time required to see substantive improvements in understanding and management. In some cases it may be possible to recognize improvement in only one or a few cycles of the adaptive cycle (Fig. 3.3). In others, learning occurs much less rapidly. Several conditions can influence the rate of learning, including the size and complexity of the resource system, the number and extent of management alternatives, and the sources and magnitudes of uncertainty.

Of interest here is the influence of the management approach itself on rates of learning. As mentioned above, learning can be accelerated by the use of active adaptive management, which utilizes management interventions proactively for the purpose of learning. Learning rates are maximized when interventions are imposed in an experimental context that includes randomization, replication and experimental control. Under these circumstances, contributions to resource objectives are temporarily postponed so that understanding can be attained as quickly as possible (68). Even here, however, environmental variation, partial controllability, partial observability, and the magnitude of structural uncertainty can slow the accumulation of knowledge, and thus impede the improvement of management.

One caveat about adaptation and the rate of learning should be mentioned here. We have described adaptive management in terms of a cycle of decision making, monitoring, and assessment that aims at reducing structural uncertainty (Fig. 3.3). Uncertainty is reduced gradually in adaptive management, through the sequential evaluation of hypotheses and accretion of knowledge about them. However, the accretion of knowledge is clearly undermined if the resource system changes more rapidly than the rate of learning about it. Even if system structure and processes remain relatively stable, the identification of strategies to achieve management objectives is undermined if the objectives change more rapidly than adaptive management can learn how to achieve them. The point here is that for adaptive management to be effective, the need to reassess and possibly change set-up phase components (stakeholders, objectives, alternatives, models, monitoring) should be less frequent than the iterative cycle of technical learning (decision making, monitoring, and assessment) (Fig. 3.4). Otherwise, learning cannot keep pace with changes in the structure of the resource system and changing stakeholder values and perspectives.

smallmouth bass

## Key Points

- Active and passive approaches to adaptive management can be distinguished from other management approaches based on their treatment of uncertainty and emphasis on learning.
- Multiple sources of uncertainty can influence resource systems and alter the capacity to manage them.
- Learning is advanced by the sequential comparison of model predictions against monitoring data, whereby confidence in an underlying hypothesis is based on the relative accuracy of model predictions.
- The practice of adaptive management flourishes in a learning organization that is open to surprise, accommodates risk, and encourages and rewards learning.
- Learning in adaptive management proceeds most rapidly when pursuit of resource objectives is temporarily postponed so that management interventions are implemented according to an experimental design.

# Concluding Remarks

Adaptive management can be applicable to local resource projects as well as large-scale conservation programs, though the legal constraints on an adaptive approach may differ across scales. But the basic framework presented in this technical guide, involving an iterative process of management, monitoring, and evaluation, applies in either case. The key issues in deciding to use adaptive management are whether there is substantial uncertainty about the impacts on management, and whether the reduction of that uncertainty can be expected to improve management.

For many important problems, adaptive management holds great promise in reducing the uncertainties that limit the effective management of natural resource systems. In many cases, utilizing management itself in an experimental context may be the only feasible way to gain the system understanding needed to improve management. In concept, adaptive management is neither conceptually complex nor operationally intricate. However, it requires refinements of the business models of DOI agencies, to more fully reflect system sustainability and resilience, more explicitly account for uncertainty, and more fully incorporate conservation planning, decision-based monitoring, and evaluation.

A realistic assessment of its challenges suggests that adaptive management is likely to be neither short-term nor inexpensive, and a considerable amount of up-front planning may be required. Stakeholders and implementing organizations must commit to providing the necessary resources for monitoring and assessment over the time required to make progress in achieving project objectives. In particular, an initial investment of time and effort will increase the likelihood of better decision making and resource stewardship in the future. The need for patience and flexibility in adaptive management highlights the importance of carefully considering the potential use of an adaptive approach, and careful planning and evaluation when adaptive management is used.

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# Key Terms

### *Estimation*

The aggregation of field data into measures of resource attributes. Examples include means, variances, and correlation coefficients computed with sample data. Multiple estimators are always available for any resource attribute, and the choice of which particular estimator to use is based on statistical features such as bias and precision.

### *Experimentation*

The imposition of treatments on subjects or experimental units for the explicit purpose of learning about treatment effects by observing outcomes. Ideally experimentation involves random allocation of treatments to experimental units, replication of treatments, and the use of controls for comparative purposes.

### *Experimental management*

The use of management interventions for the purpose of understanding the effects of management. Interventions are used as experimental treatments, ideally (but infrequently) in the context of randomization, replication, and experimental control.

### *Hypothesis*

A suggested but unconfirmed assertion or explanation of observed patterns. Hypotheses can take many forms, for example, a hypothesized magnitude of a resource attribute or a mathematical relationship between attributes. Hypotheses are tested by comparison against field data.

### *Management by experiment*

An approach to management that recognizes management interventions as experiments, by means of which understanding can be enhanced as management proceeds through time.

### *Management action*

An action affecting a managed system, taken as a result of a management decision. In the context of natural resources, management actions typically influence the status of resources or the processes that control resource dynamics.

### *Management alternative*

A potential management action. In sequential management, a management action is selected at each point in time from an identified set of management alternatives. The set of management alternatives constrains and influences the choice of a management strategy.

### *Management decision*

A decision to take a management action. In adaptive management, decision making typically is driven by management objectives, with active stakeholder involvement. Adaptive decision making takes into account both the current status of resources and the level of understanding about them.

### *Management option*

Used interchangeably with management alternative.

### *Management strategy*

A prescription of management actions pursuant to management objectives. In the context of adaptive management, a management strategy describes time-specific management actions to be taken, conditional on current resource status and the level of understanding about resource dynamics. Management strategies often are expressed in terms of resource thresholds, on either side of which a different action is to be taken.

### *Model*

Any representation, whether verbal, diagrammatic, or mathematical, of an object or phenomenon. Natural resource models typically characterize resource systems in terms of their status and change through time. Models imbed hypotheses about resource structures and functions, and they generate predictions about the effects of management actions.

### *Objective*

A desired outcome or performance measure that expresses stakeholder values and serves to guide natural resource decision making and evaluation of success.

### *Stakeholders*

Individuals and organizations (e.g., managers, scientists, private citizens, nongovernmental organizations) with a vested interest in a shared enterprise. Interests can include an expectation of received benefit, a perceived threat, a prior investment of time and/or resources, or values shared with others associated with the enterprise. Active engagement of stakeholders promotes the successful implementation of adaptive management.

### *Threshold*

The limiting value of a resource attribute that triggers a change in management actions. Management strategies often include thresholds, such that one action is specified for resource values less than the threshold and a different action is specified for larger resource values.

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**National Park Service/ Mar Vista Stables**
**Town hall Meeting**

Saturday, December 12, 2009

# AGENDA

1. Introductions
2. GGNRA overview – lands and law enforcement personnel
3. GGNRA Compendium - areas open to equestrians
4. Overview and status of dog management in GGNRA
5. Legal questions/definitions
    a. Definition of Off Leash (must carry a leash at all times?).
    b. Definition of dog incident--Criminal vs. Non-Criminal.
    c. How to report incidents
    d. Rights of equestrians/rights of dog owners.
6. Interactions with off leash dogs
    a. How to address dogs running, chasing, barking.
    b. Suggested communications between riders and dog walkers in both non-emergency and emergency situations
7. Education/Outreach Suggestions
    a. Future dog/ horse "park petiquette" events (introducing dogs to horses, explaining responsibilities of both).
    b. What can equestrians do to help educate all users on best shared use behavior? (Fliers, website Q & A, Blogs, Bulletin Board Postings, etc.).

# Golden Gate National Recreation Area
# Dog Management Education and Public Involvement Plan

## PURPOSE

The fundamental purpose of the public participation plan is to educate the public on new dogwalking regulations, to provide clarity on the regulations and to increase compliance with regulations. This plan will be common to all action alternatives, B, C, D, and E.

The plan will target a wide range of audiences—multiple user groups, individuals, professional dogwalking groups, environmental groups, civic groups, business groups, agency staff and leaders, appointed/elected officials, representatives on the Negotiated Rulemaking Committee and others.

The history of dogwalking in GGNRA has led to confusion on the part of visitors and staff as to the regulations regarding dogwalking and the areas where they can walk their dogs. At this current time, there are areas of the park where dogs are not allowed, where they are allowed on-leash and where they are allowed off-leash (due to U.S. v. Barley). The Dog Management Education and Public Involvement Plan will educate visitors as to where dogwalking is allowed in GGNRA under the regulation as well as appropriate dogwalking behavior that is expected when they visit a national park..

A period will be identified to educate the public about the new regulation, areas of the park that allow dogwalking and under what conditions. Information distributed to the public will also include the date at which time the regulation will be enforced. During this time, NPS will request that organized dog groups set up a meeting (s) with their members so NPS staff can talk with them directly about the regulation.

In addition the park will identify different venues to educate the public to ensure that visitors have an understanding of the new regulations in each area of the park where dogs are allowed. Through these varied venues, information will be made readily accessible both to regular visitors and those who may only visit the park periodically.

## I. PUBLIC INVOLVEMENT COMPONENTS

The Dog Management Education and Public Involvement Plan includes the following components:

### I.

- **Mailing Database**

GGNRA maintains a database of persons, groups, and agencies interested in notification of updated general park information as well as a special mailing list developed for dog management. The park will initiate a conversion to an email list as soon as staff availability permits. We will also contact the public through the following organizations: Golden Gate National Parks Conservancy, dogwalking organizations and park partners, as well as other entities.

- **Open Houses**

The public will be invited to attend quarterly park Open House meetings. Dog Management information materials will be available and the public will have the opportunity to ask questions on dog management. The meetings are open to the public and noticed through the GGNRA public affairs office. The park will also consider setting up regularly scheduled meetings of stakeholder organizations for information sharing on dog management. Summaries of these meetings will be posted on the park website.

- **Written Materials:**

New materials will be developed that will include brochures and a comprehensive guide to dogwalking at GGNRA with maps and pad maps. This guide will address dogwalking for each of the 3 counties of the park. A compilation of these materials will be published as the "Official Guide to Dogwalking in GGNRA."

- **Signage:**

A new family of regulatory and interpretive signs with consistent design and style will be developed that is clear and concise so the public can understand the regulations and the reasons behind dogwalking regulations at specific sites. Funding will be sought to build an inventory of these signs in order to expedite sign additions/replacements.

- **Education and Role of NPS Staff**

All field staff will be educated on the new regulations and will discuss them with the public. It will be the primary role of the Interpretation Division to disseminate information through visitor centers and educational and public programs. All law enforcement personnel will be clearly briefed and will educate the public as well as enforce the regulation, as NPS law enforcement staff are trained to gain compliance through education. A separate law enforcement strategy will be developed.

- **Continued Updates to Adjacent Agencies and Community Leaders**

Written information will be shared with above community leaders so they can share it with constituents.

- **Current Dogwalking Events in the Park:**

NPS staff will attend current cleanup days at Fort Funston and Crissy Field at least once per year to discuss the regulation and gather feedback. The dogwalking communities in Marin and San Mateo Counties will be asked to develop cleanup days at least once per year and NPS will attend those events.

A guide will be developed that informs the public of the regulations in each area of the park, including maps of each area where dogwalking is allowed. It will also include desired dogwalking behaviors. When ready, an extensive media campaign will be mounted to announce the guide and the new regulation.

- **Special Events**

Special use permits for large special events will require that the event organizer provide educational materials on the dogwalking program.

- **Media Outreach**

NPS will encourage media coverage of new regulations as a means of informing and educating the public on the new regulations. Ads will be placed in community newspapers and dogwalking magazines as funding allows as a means of targeting the dogwalking community so they are aware of the new regulations.

- **Link to Dogwalking Websites**

Dogwalking groups will be asked to link their websites to the GGNRA website so their constituents and members will have access to the new regulation and dogwalking plan for the park. The *National Park Service Parameters and Scope of Negotiated Rulemaking Discussion* (July 31, 2006), which was distributed to all Negotiated Rulemaking Committee members, stated that "Dogwalking groups must be active partners in management of dogwalking in the park including disseminating accurate information to constituents regarding dog management regulations." The NPS will make clear that if compliance with the new regulation is not achieved in areas of the park, adaptive management measures would be applied that could result in the modification or loss of dogwalking.

- **Partnerships to Develop Dogwalking Educational Materials**

Partnerships with other land managing agencies and dogwalking groups are key to ensuring that visitors are informed of the new regulation. GGNRA will make an effort to partner with Bay Area park agencies to develop a video/training/outreach on proper dogwalking etiquette in parks and open spaces. We anticipate that this video may be used in conjunction with a TAG program, if one is adopted. We also anticipate that dog groups (SPCAs, humane societies, dog rescue groups and commercial, if applicable) will conduct classes on proper etiquette in parks and open spaces, whether or not a tag program is developed.

- **Education Through the Volunteer Program**

The park currently has several volunteer docent programs, including the Trail Keepers Program and the Snowy Plover Docent Program. These docents will be educated on the new regulation so they can inform the public when they are volunteering in the park. Members of the organized dogwalking groups will be encouraged to be part of these volunteer programs as a way to educate their own peers.

## II. STAFF

In order to successfully implement this plan, the following staff positions have been identified:

Community Relations Coordinator: This position will manage outreach through varied means, including the Golden Gate National Parks Conservancy Stewardship Programs (includes Site Stewardship, Trail Keepers, Raptor Observatory, Crissy Field Center), as well as through NPS docent and other VIP programs.

Trailhead Staff: These staff will be the main contact with the public at trailheads and other park locations as well as at community events out of the park. They will educate the public on dogwalking regulations and behavior as well as park resources and recreational opportunities. An additional 4-5 staff would be needed to supplement the present Interpretive staff. Part-time visitor use assistants would be hired and they would be placed where and when needed.

Signage Program Staff: The program will require 1 additional staff person dedicated to this project for the first year in order to change signage when the new regulation is implemented. After that, a half-time staff person will be needed to facilitate replacement of damaged signs.

*deliberative internal draft*

# GOLDEN GATE NATIONAL RECREATION AREA

**Definition of responsible off-leash dog control in ROLAs:**

Negotiated Rulemaking Committee definition (*Note: this definition did not achieve consensus*):

- Dogs in a ROLA are to be kept under control at all times. Dogs are considered under control when they are within direct eyesight of the owner/handler and when they have the ability to immediately respond to their owner/handler. Dogs that annoy, harass, or attack people, wildlife, livestock or other dogs, leashed or unleashed, or which enter leash-required or dog-prohibited areas, are presumed to be not under control.

- Dogs should be required to be licensed and wear an ID at all times. (This would be covered by the TAG program).
-

- All dog walkers must have a leash for each dog under their care.

- Dog walkers must keep their dog(s) in sight at all times.

Additional considerations:

- Dogs should be required to be licensed and wear an ID at all times. (Keep this requirement, but under ROLA definition, not as part of the TAG program, especially since Alt. C doesn't have a TAG program).

- Add to the definition above the word "pursue" or "chase" – to make it more congruent with the ESA, and so that we do not find ourselves in debates about whether a dog chasing a bird was or was not "annoying" or "harassing" the bird.

- Add to the definition above: Dogs in a ROLA are to be kept under control at all times regardless of distractions.

- Add to the definition above what "immediately respond" means. Could be argued that if the dog turns its head it has responded, but NPS needs something more affirmative, such as actually returning to its owner. Boulder OSMP defines it this way: "if your dog … will not consistently come to you immediately upon command, your dog must be leashed." East Bay Regional Parks defines it as the ability to quickly return to the guardian when called.

**Comment [ses1]:** Is an ID really necessary – isn't the license enough?

**Comment [ses2]:** Draft of TAG program for consideration by park would certify dogwalkers, not dogs, so would not provide an ID for animals.

- Add to the definition above a prohibition on digging, destroying vegetation, or entering fenced or closed areas. This is consistent with the brochure "Enjoying Crissy Field With Your Dog."

- Require dogs under four months old to be leashed.

- Ban dogs in heat.

**“Interagency Implementation Hand book for**
**Federal Lands Recreation Enhancement Act”**

**Keeping with the intent of the law, this interagency agreement on common definitions and policy guidance will establish basis for consistency in actions and enable common reporting by each of the agencies implementing the Federal Lands Recreation Enhancement Act (REA).**

**The Secretary delegates to the individual agencies sections of the law for-policy development and implementation. Each agency will provide the Department with the written policy guidance that incorporates these standard definitions and overarching policy guidelines. The following policy guidelines provide the Departmental level guidance identified by the law and may b e tailored and expanded upon to fit specific agency situations or requirements.**

TITLE VIII--FEDERAL LANDS RECREATION ENHANCEMENT ACT

## SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

1**(a)** *Short Title*.--This title may be cited as the ``Federal Lands Recreation Enhancement Act".
1**(b)** *Table of Contents*.--The table of contents of this Act is as follows:

Sec..1..Short title and table of contents.
Sec..2..Definitions.
Sec..3..Recreation fee authority.
Sec..4..Public participation.
Sec..5..Recreation passes.
Sec..6..Cooperative agreements.
Sec..7..Special account and distribution of fees and revenues.
Sec..8..Expenditures.
Sec..9..Reports.
Sec..10..Sunset provision.
Sec..11..Volunteers.
Sec..12..Enforcement and protection of receipts.
Sec..13..Repeal of superseded admission and use fee authorities.
Sec..14..Relation to other laws and fee collection authorities.
Sec..15..Limitation on use of fees for employee bonuses.

## SEC. 2. DEFINITIONS.

In this Act:

**Definition:** ***Area vs. Site***
The terms “area” and “site” are used interchangeably in the Act; therefore, where the term “site” is used, refer to the definition of “area” provided under Section 3(f)(4).

2**(1) STANDARD AMENITY RECREATION FEE**.--The term ``standard amenity recreation fee" means the recreation fee authorized by section 3(f).

2**(2) EXPANDED AMENITY RECREATION FEE**.--The term ``expanded amenity recreation fee'' means the recreation fee authorized by section 3(g).

2**(3) ENTRANCE FEE**.--The term ``entrance fee'' means the recreation fee authorized to be charged to enter onto lands managed by the National Park Service or the United States Fish and Wildlife Service.

2**(4) FEDERAL LAND MANAGEMENT AGENCY**.--The term ``Federal land management agency'' means the National Park Service, the United States Fish and Wildlife Service, the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service.

2**(5) FEDERAL RECREATIONAL LANDS AND WATERS**.--The term ``Federal recreational lands and waters'' means lands or waters managed by a Federal land management agency.

**Definition: Section 2(5)**
***Jurisdiction vs. Managed Lands*:** The Act limits the agency's **jurisdiction** under Section 3(f) to Federal lands and waters identified as **managed** in Section 2(5) by a Federal land management agency, which includes the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, the Bureau of Reclamation, and the Forest Service (as per Section 2(4)).

2**(6) NATIONAL PARKS AND FEDERAL RECREATIONAL LANDS PASS**.--The term ``National Parks and Federal Recreational Lands Pass'' means the interagency national pass authorized by section 5.

2**(7) PASSHOLDER**.--The term ``passholder'' means the person who is issued a recreation pass.

2**(8) RECREATION FEE**.--The term ``recreation fee'' means an entrance fee, standard amenity recreation fee, expanded amenity recreation fee, or special recreation permit fee.

2**(9) RECREATION PASS**.--The term ``recreation pass'' means the National Parks and Federal Recreational Lands Pass or one of the other recreation passes available as authorized by section 5.

2**(10) SECRETARY**.--The term ``Secretary'' means--

2(10)**(A)** the Secretary of the Interior, with respect to a Federal land management agency (other than the Forest Service); and

2(10)**(B)** the Secretary of Agriculture, with respect to the Forest Service.

2**(11) SECRETARIES**.--The term ``Secretaries'' means the Secretary of the Interior and the Secretary of Agriculture acting jointly.

2**(12) SPECIAL ACCOUNT**.--The term ``special account'' means the special account established in the Treasury under section 7 for a Federal land management agency.

2**(13) SPECIAL RECREATION PERMIT FEE**.--The term ``special recreation permit fee'' means the fee authorized by section 3(h).

**SEC. 3. RECREATION FEE AUTHORITY.**

3**(a)** *Authority of Secretary*.--Beginning in fiscal year 2005 and thereafter, the Secretary may establish, modify, charge, and collect recreation fees at Federal recreational lands and waters as provided for in this section.

3**(b)** *Basis for Recreation Fees*.--Recreation fees shall be established in a manner consistent with the following criteria:

3(b)**(1)** The amount of the recreation fee shall be commensurate with the benefits and services provided to the visitor.

3(b)**(2)** The Secretary shall consider the aggregate effect of recreation fees on recreation users and recreation service providers.

3(b)**(3)** The Secretary shall consider comparable fees charged elsewhere and by other public agencies and by nearby private sector operators.

3(b)**(4)** The Secretary shall consider the public policy or management objectives served by the recreation fee.

3(b)**(5)** The Secretary shall obtain input from the appropriate Recreation Resource Advisory Committee, as provided in section 4(d).

3(b)**(6)** The Secretary shall consider such other factors or criteria as determined appropriate by the Secretary.

3**(c)** *Special Considerations*.--The Secretary shall establish the minimum number of recreation fees and shall avoid the collection of multiple or layered recreation fees for similar uses, activities, or programs.

**Policy: Section 3(b)(1)-(6) and Section 3(c)**
Each agency, using the authority given in the Act, shall ensure that recreation fees are established in a manner consistent with the criteria set out under Sections 3(b)(1-6) and 3(c) for all of its units collecting recreation fees. Each agency will identify the appropriate management tool (business plan or implementation plan) to be used by each of its units and will include an explanation of how recreation fees are consistent with these criteria.

3**(d)** *Limitations on Recreation Fees*.—

**Policy: Section 3(d)**
Each agency must ensure that applicable prohibitions are included and adhered to in their respective guidelines.

3(d)**(1) PROHIBITION ON FEES FOR CERTAIN ACTIVITIES OR SERVICES**.--The Secretary shall not charge any standard amenity recreation fee or expanded amenity recreation fee for Federal recreational lands and waters administered by the Bureau of Land Management, the Forest Service, or the Bureau of Reclamation under this Act for any of the following:

3(d)(1)**(A)** Solely for parking, undesignated parking, or picnicking along roads or trailsides.

**Definition: Section 3(d)(1)(A)**
***Parking:*** Parking that does not immediately support and/or adjoin a fee site or area.

3(d)(1)**(B)** For general access unless specifically authorized under this section.

3(d)(1)**(C)** For dispersed areas with low or no investment unless specifically authorized under this section.

3(d)(1)**(D)** For persons who are driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using the facilities and services.

**Policy: Section 3(d)(1)(D)**
This prohibition does not apply to special recreation permit holders (i.e., outfitting, guiding permits, and individual use of special areas).

3(d)(1)**(E)** For camping at undeveloped sites that do not provide a minimum number of facilities and services as described in subsection (g)(2)(A).

3(d)(1)**(F)** For use of overlooks or scenic pullouts.

3(d)(1)**(G)** For travel by private, noncommercial vehicle over any national parkway or any road or highway established as a part of the Federal-aid System, as defined in section 101 of title 23, United States Code, which is commonly used by the public as a means of travel between two

places either or both of which are outside any unit or area at which recreation fees are charged under this Act.

3(d)(1)**(H)** For travel by private, noncommercial vehicle, boat, or aircraft over any road or highway, waterway, or airway to any land in which such person has any property right if such land is within any unit or area at which recreation fees are charged under this Act.

3(d)(1)**(I)** For any person who has a right of access for hunting or fishing privileges under a specific provision of law or treaty.

3(d)(1)**(J)** For any person who is engaged in the conduct of official Federal, State, Tribal, or local government business.

3(d)(1)**(K)** For special attention or extra services necessary to meet the needs of the disabled.

3(d)**(2) RELATION TO FEES FOR USE OF HIGHWAYS OR ROADS.**--An entity that pays a special recreation permit fee or similar permit fee shall not be subject to a road cost-sharing fee or a fee for the use of highways or roads that are open to private, noncommercial use within the boundaries of any Federal recreational lands or waters, as authorized under section 6 of Public Law 88-657 (16 U.S.C. 537; commonly known as the Forest Roads and Trails Act).

3(d)**(3) PROHIBITION ON FEES FOR CERTAIN PERSONS OR PLACES**.--The Secretary shall not charge an entrance fee or standard amenity recreation fee for the following:

3(d)(3)**(A)** Any person under 16 years of age.

3(d)(3)**(B)** Outings conducted for noncommercial educational purposes by schools or bona fide academic institutions.

3(d)(3)**(C)** The U.S.S. Arizona Memorial, Independence National Historical Park, any unit of the National Park System within the District of Columbia, or Arlington House-Robert E. Lee National Memorial.

3(d)(3)**(D)** The Flight 93 National Memorial.

3(d)(3)**(E)** Entrance on other routes into the Great Smoky Mountains National Park or any part thereof unless fees are charged for entrance into that park on main highways and thoroughfares.

3(d)(3)**(F)** Entrance on units of the National Park System containing deed restrictions on charging fees.

3(d)(3)**(G)** An area or unit covered under section 203 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 16 U.S.C. 410hh-2), with the exception of Denali National Park and Preserve.

3(d)(3)**(H)** A unit of the National Wildlife Refuge System created, expanded, or modified by the Alaska National Interest Lands Conservation Act (Public Law 96-487).

3(d)(3)**(I)** Any person who visits a unit or area under the jurisdiction of the United States Fish and Wildlife Service and who has been issued a valid migratory bird hunting and conservation stamp issued under section 2 of the Act of March 16, 1934 (16 U.S.C. 718b; commonly known as the Duck Stamp Act).

3(d)(3)**(J)** Any person engaged in a nonrecreational activity authorized under a valid permit issued under any other Act, including a valid grazing permit.

3(d)**(4) NO RESTRICTION ON RECREATION OPPORTUNITIES.**--Nothing in this Act shall limit the use of recreation opportunities only to areas designated for collection of recreation fees.

3**(e)** *Entrance Fee*.—

**Policy: Section 3(e)**
***Entrance Fee:*** Each agency must ensure that an applicable definition for this term is included in their respective guidelines.

3(e)**(1) AUTHORIZED SITES FOR ENTRANCE FEES.**--The Secretary of the Interior may charge an entrance fee for a unit of the National Park System, including a national monument administered by the National Park Service, or for a unit of the National Wildlife Refuge System.

3(e)**(2) PROHIBITED SITES**.--The Secretary shall not charge an entrance fee for Federal recreational lands and waters managed by the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service.

3**(f)** *Standard Amenity Recreation Fee*.--Except as limited by subsection (d), the Secretary may charge a standard amenity recreation fee for Federal recreational lands and waters under the jurisdiction of the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service, but only at the following:

**Definition: Section 3(f)**
***Jurisdiction vs. Managed Lands*:** The Act limits the agency's **jurisdiction** under Section 3(f) to Federal lands and waters identified as **managed** in Section 2(5) by a Federal land management agency, which includes the National Park Service, the Fish and Wildlife Service, the Bureau of Land Management, the Bureau of Reclamation, and the Forest Service (as per Section 2(4)).

**Policy: Section 3(f )**
***Standard Amenity Recreation Fee:*** Each agency must ensure that an applicable definition is included in their respective guidelines.

3(f)**(1)** A National Conservation Area.

3(f)**(2)** A National Volcanic Monument.

3(f)**(3)** A destination visitor or interpretive center that provides a broad range of interpretive services, programs, and media.

**Definition: Section 3(f)(3)**
***Visitor or Interpretive Center:***
- Provides a central location for communicating a specific theme and important stories to the public;
- Provides a direct visual or physical link to the resources;
- Provides basic public services such as emergency telephone; and
- Often contains a variety of interpretive media such as exhibits, audiovisual programs, resource libraries, observation areas, interpretive programs, and trailheads.

3(f)**(4)** An area-

**Definition: Section 3(f)(4)**
***Area:*** An area of recreation may be a site, complex of sites, or a high impact recreation area that, at a minimum, meets all of the conditions 3(f)(4)(A-D).

**Further Definition: Section 3(f)(4)**
***High-Impact Recreation Area, Geographic area, or Waterway Corridor:*** A recreation area or geographic area or waterway corridor of concentrated recreation use which includes a variety of developed sites providing a similar recreation opportunity. High-impact recreation areas incur significant expenditures for restoration, public safety, sanitation facilities, education, maintenance, and other activities necessary to protect the health and safety of visitors, cultural resources and the natural environment. They may contain sub-areas of little development and use which results in environmental impacts such as noticeable litter, vandalism, soil compaction, or erosion. These areas require intensive management to enhance visitor experiences, address environmental impacts, and manage conflicting uses. An area of high recreation impact is not an administrative unit such as a National Forest, Bureau of Land Management Field Office, or Reclamation Project. In addition, it is a contiguous area directly associated with clearly identified places, activities, or special, natural, or cultural features that is the focal point of recreation use and has clearly defined access points and clearly described area boundaries.

Typically, a high impact recreation area is comprised of a complex of individual sites and displays one or more of the following characteristics:

- Has a population of 1 million or more within 2 hours of driving time;
- Contains rivers, streams, lakes or interpreted scenic byway corridors;
- Is designed and conducted to maintain or enhance the recreational opportunities through natural resource management activities;
- Has regionally or nationally recognized recreation resources; and
- Is regionally or locally marketed for its tourism value.

3(f)(4)**(A)** that provides significant opportunities for outdoor recreation;
3(f)(4)**(B)** that has substantial Federal investments;
3(f)(4)**(C)** where fees can be efficiently collected; and
3(f)(4)**(D)** that contains all of the following amenities:
3(f)(4)(D)**(i)** Designated developed parking.

**Definition: Section 3(f)(4)(D)(i)**
***Designated Developed Parking:*** A parking area that has a graded surface, clearly delineated boundaries, and natural or constructed surfacing.

3(f)(4)(D)**(ii)** A permanent toilet facility.

**Definition: Section 3(f)(4)(D)(ii)**
***Permanent Toilet:*** A toilet building that is permanently affixed or that is available year after year during the primary season of use, but is mobile due to environmental or weather concerns.

3(f)(4)(D)**(iii)** A permanent trash receptacle.

**Definition: Section 3(f)(4)(D)(iii)**
***Permanent Trash Receptacle:*** A garbage container of durable design and construction that is permanently available during the primary season of use, or that is moved due to environmental or weather concerns.

3(f)(4)(D)**(iv)** Interpretive sign, exhibit, or kiosk.

**Definition: Section 3(f)(4)(D)(iv)**
***Interpretive Sign, Exhibit or Kiosk:*** Each site or area must contain at least one public display designed to enhance the public's enjoyment and understanding of the natural or cultural environment. This requirement is in addition to facilities needed to inform visitors of recreation opportunities and/or facilities in the area and applicable regulations and/or restrictions.

3(f)(4)(D)**(v)** Picnic tables.
3(f)(4)(D)**(vi)** Security services.

**Definition: Section 3(f)(4)(D)(vi)**
***Security Services:*** Public safety services routinely provided by designated security personnel (e.g., Federal employee, campground host, on-site volunteer; routine scheduled visits by law enforcement or other Federal employee; a reliable communication to a law enforcement officer, Federal employee, or an after hours emergency call service). The level of security services provided should be commensurate with the use levels, and security service facilities such as gates, fences, security lighting etc., may be appropriate.

3**(g)** *Expanded Amenity Recreation Fee.—*

**Policy: Section 3(g)**
***Expanded Amenity Recreation Fee:*** Each agency must ensure that an applicable definition for this term is included in their respective guidelines.

3(g)**(1) NPS AND USFWS AUTHORITY**.--Except as limited by subsection (d), the Secretary of the Interior may charge an expanded amenity recreation fee, either in addition to an entrance fee or by itself, at Federal recreational lands and waters under the jurisdiction of the National Park Service or the United States Fish and Wildlife Service when the Secretary of the Interior determines that the visitor uses a specific or specialized facility, equipment, or service.

3(g)**(2) OTHER FEDERAL LAND MANAGEMENT AGENCIES.**--Except as limited by subsection (d), the Secretary may charge an expanded amenity recreation fee, either in addition to a standard amenity fee or by itself, at Federal recreational lands and waters under the jurisdiction of the Forest Service, the Bureau of Land Management, or the Bureau of Reclamation, but only for the following facilities or services:

3(g)(2)**(A)** Use of developed campgrounds that provide at least a majority of the following:

**Definition: Section 3(g)(2)(A)**
***Majority:*** At least five of the nine facilities stated in Section 3(g)(2)(A)(i-ix).

3(g)(2)(A)**(i)** Tent or trailer spaces.
3(g)(2)(A)**(ii)** Picnic tables.
3(g)(2)(A)**(iii)** Drinking water.
3(g)(2)(A)**(iv)** Access roads.
3(g)(2)(A)**(v)** The collection of the fee by an employee or agent of the Federal land management agency.

**Definition: Section 3(g)(2)(A)(v)**
***Federal employee or agent of the Federal land management agency:*** A Federal employee or agent includes campground host, volunteer, recreation technician, and automated self-service fee/drop box fee stations.

3(g)(2)(A)**(vi)** Reasonable visitor protection.

**Definition: Section 3(g)(2)(A)(vi)**
***Reasonable visitor protection:*** Reasonable visitor protection includes:
- Federal employee, campground host, on-site volunteer;
- A routine scheduled, but not published visit by law enforcement or other Federal employee; or
- Reliable communication to law enforcement, Federal employee, or after hours emergency call service.

3(g)(2)(A)**(vii)** Refuse containers.
3(g)(2)(A)**(viii)** Toilet facilities.
3(g)(2)(A)**(ix)** Simple devices for containing a campfire.

3(g)(2)**(B)** Use of highly developed boat launches with specialized facilities or services such as mechanical or hydraulic boat lifts or facilities, multi-lane paved ramps, paved parking, restrooms and other improvements such as boarding floats, loading ramps, or fish cleaning stations.

**Further Definition: Section 3(g)(2)(B)**
In addition to the facilities identified, the following contribute to identification as "highly developed boat launches with specialized facilities or services:"

- Lighting for parking and ramp use;
- Security services;
- Changing rooms;
- Boarding floats or docks which includes any floating or fixed facility such as a dock, deck, quay, or pier designed to allow people to transfer from land or shore onto a vessel;
- Mooring floats/buoys, moorage dock; and
- Refuse containers.

3(g)(2)**(C)** Rental of cabins, boats, stock animals, lookouts, historic structures, group day-use or overnight sites, audio tour devices, portable sanitation devices, binoculars or other equipment.

**Definition: Section 3(g)(2)(C)**
***Lookout:*** Lookouts are defined as lookout towers.

**Definition: Section 3(g)(2)(C)**
***Portable Sanitation Devices***: Portable Sanitation Devices are self-contained portable toilets.

**Further Definition: Section 3(g)(2)(C)**
An addition to the facilities listed under Section 3(g)(2)(C) is trail shelters.

3(g)(2)**(D)** Use of hookups for electricity, cable, or sewer.
3(g)(2)**(E)** Use of sanitary dump stations.
3(g)(2)**(F)** Participation in an enhanced interpretive program or special tour.
3(g)(2)**(G)** Use of reservation services.
3(g)(2)**(H)** Use of transportation services.

**Definition: Section 3(g)(2)(H)**
***Transportation Services:*** Vehicles designed to move (shuttle) visitors between a parking lot and the destination recreation area and/or to move (shuttle) visitors around from one location or attraction to another.

3(g)(2)**(I)** Use of areas where emergency medical or first-aid services are administered from facilities staffed by public employees or employees under a contract or reciprocal agreement with the Federal Government.

**Definition: Section 3(g)(2)(I)**
***Emergency Medical or First-aid Services:*** At least one certified emergency medical person on site during hours of operation and reliable communication to an emergency facility.

3(g)(2)**(J)** Use of developed swimming sites that provide at least a majority of the following:

**Definition: Section 3(g)(2)(J)**
***Majority:*** At least four of the seven facilities listed in Section 3(g)(2)(J)(i-vii).

3(g)(2)(J)**(i)** Bathhouse with showers and flush toilets.
3(g)(2)(J)**(ii)** Refuse containers.

**Definition: Section 3(g)(2)(J)(iii)**
***Picnic Areas:*** An area with tables normally used for short periods of time.

3(g)(2)(J)**(iii)** Picnic areas.
3(g)(2)(J)**(iv)** Paved parking.

3(g)(2)(J)**(v)** Attendants, including lifeguards.

3(g)(2)(J)**(vi)** Floats encompassing the swimming area.

**Definition: Section 3(g)(2)(J)(vi)**
***Floats Encompassing the Swimming Area***: Any on-site marker may be used as long as it **encompasses** the swimming area.

3(g)(2)(J)**(vii)** Swimming deck.

3**(h)** *Special Recreation Permit Fee*.--The Secretary may issue a special recreation permit, and charge a special recreation permit fee in connection with the issuance of the permit, for specialized recreation uses of Federal recreational lands and waters, such as group activities, recreation events, motorized recreational vehicle use.

**Definition: Section 3(h)**
***Special Recreation Permit Fees (SRP)***: SRPs are authorizations which allow specified recreational use of the public lands and related waters. They are issued to:

- Control visitor use;
- Protect recreational, natural, and cultural resources; and
- Provide for the health and safety of visitors.

SRPs are also a mechanism to authorize:

- Commercial and vending use;
- Competitive events;
- Organized group activities and events; and
- Individual or group use of special areas.

**SEC. 4. PUBLIC PARTICIPATION.**

4**(a)** *In General*.--As required in this section, the Secretary shall provide the public with opportunities to participate in the development of or changing of a recreation fee established under this Act.

4**(b)** *Advance Notice*.--The Secretary shall publish a notice in the Federal Register of the establishment of a new recreation fee area for each agency 6 months before establishment. The Secretary shall publish notice of a new recreation fee or a change to an existing recreation fee established under this Act in local newspapers and publications located near the site at which the recreation fee would be established or changed.

4**(c)** *Public Involvement*.--Before establishing any new recreation fee area, the Secretary shall provide opportunity for public involvement by--

4(c)**(1)** establishing guidelines for public involvement;

4(c)**(2)** establishing guidelines on how agencies will demonstrate on an annual basis how they have provided information to the public on the use of recreation fee revenues; and

4(c)**(3)** publishing the guidelines in paragraphs (1) and (2) in the Federal Register.

4**(d)** *Recreation Resource Advisory Committee*.--

4(d)**(1) ESTABLISHMENT.--**

4(d)(1)**(A) AUTHORITY TO ESTABLISH.--**Except as provided in subparagraphs (C) and (D), the Secretary or the Secretaries shall establish a Recreation Resource Advisory Committee in each State or region for Federal recreational lands and waters managed by the Forest Service or the Bureau of Land Management to perform the duties described in paragraph (2).

4(d)(1)**(B) NUMBER OF COMMITTEES**.--The Secretary may have as many additional Recreation Resource Advisory Committees in a State or region as the Secretary considers necessary for the effective operation of this Act.

4(d)(1)**(C) EXCEPTION.**--The Secretary shall not establish a Recreation Resource Advisory Committee in a State if the Secretary determines, in consultation with the Governor of the State, that sufficient interest does not exist to ensure that participation on the Committee is balanced in terms of the points of view represented and the functions to be performed.

4(d)(1)**(D) USE OF OTHER ENTITIES**.--In lieu of establishing a Recreation Resource Advisory Committee under subparagraph (A), the Secretary may use a Resource Advisory Committee established pursuant to another provision of law and in accordance with that law or a recreation fee advisory board otherwise established by the Secretary to perform the duties specified in paragraph (2).

4(d)**(2) DUTIES**.--In accordance with the procedures required by paragraph (9), a Recreation Resource Advisory Committee may make recommendations to the Secretary regarding a standard amenity recreation fee or an expanded amenity recreation fee, whenever the recommendations relate to public concerns in the State or region covered by the Committee regarding--

4(d)(2)**(A)** the implementation of a standard amenity recreation fee or an expanded amenity recreation fee or the establishment of a specific recreation fee site;

4(d)(2)**(B)** the elimination of a standard amenity recreation fee or an expanded amenity recreation fee; or

4(d)(2)**(C)** the expansion or limitation of the recreation fee program.

4(d)**(3) MEETINGS.**--A Recreation Resource Advisory Committee shall meet at least annually, but may, at the discretion of the Secretary, meet as often as needed to deal with citizen concerns about the recreation fee program in a timely manner.

4(d)**(4) NOTICE OF REJECTION.--**If the Secretary rejects the recommendation of a Recreation Resource Advisory Committee, the Secretary shall issue a notice that identifies the reasons for rejecting the recommendation to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than 30 days before the Secretary implements a decision pertaining to that recommendation.

4(d)**(5) COMPOSITION OF THE ADVISORY COMMITTEE**.--

4(d)(5)**(A) NUMBER**.--A Recreation Resource Advisory Committee shall be comprised of 11 members.

4(d)(5)**(B) NOMINATIONS**.--The Governor and the designated county official from each county in the relevant State or Region may submit a list of nominations in the categories described under subparagraph (D).

4(d)(5)**(C) APPOINTMENT.**--The Secretary may appoint members of the Recreation Resource Advisory Committee from the list as provided in subparagraph (B).

4(d)(5)**(D) BROAD AND BALANCED REPRESENTATION.**--In appointing the members of a Recreation Resource Advisory Committee, the Secretary shall provide for a balanced and broad representation from the recreation community that shall include the following:

4(d)(5)(D)**(i)** Five persons who represent recreation users and that include, as appropriate, persons representing the following:

4(d)(5)(D)(i)**(I)** Winter motorized recreation, such as snowmobiling.

4(d)(5)(D)(i)**(II)** Winter non-motorized recreation, such as snowshoeing, cross country and down hill skiing, and snowboarding.

4(d)(5)(D)(i)**(III)** Summer motorized recreation, such as motorcycles, boaters, and off-highway vehicles.

4(d)(5)(D)(i)**(IV)** Summer nonmotorized recreation, such as backpacking, horseback riding, mountain biking, canoeing, and rafting.

4(d)(5)(D)(i)**(V)** Hunting and fishing.

4(d)(5)(D)**(ii)** Three persons who represent interest groups that include, as appropriate, the following:

4(d)(5)(D)(ii)**(I)** Motorized outfitters and guides.

4(d)(5)(D)(ii)**(II)** Non-motorized outfitters and guides.

4(d)(5)(D)(ii)**(III)** Local environmental groups.

4(d)(5)(D)**(iii)** Three persons, as follows:

4(d)(5)(D)(iii)**(I)** State tourism official to represent the State.

4(d)(5)(D)(iii)**(II)** A person who represents affected Indian tribes.

4(d)(5)(D)(iii)**(III)** A person who represents affected local government interests.

4(d)**(6) TERM.--**

4(d)(6)**(A) LENGTH OF TERM.--**The Secretary shall appoint the members of a Recreation Resource Advisory Committee for staggered terms of two and three years beginning on the date of the members are first appointed. The Secretary may reappoint members to subsequent two- or three-year terms.

4(d)(6)**(B) EFFECT OF VACANCY.--**The Secretary shall make appointments to fill a vacancy on a Recreation Resource Advisory Committee as soon as practicable after the vacancy has occurred.

4(d)(6)**(C) EFFECT OF UNEXPECTED VACANCY.--**Where an unexpected vacancy occurs, the Governor and the designated county officials from each county in the relevant state shall provide the Secretary with a list of nominations in the relevant category, as described under paragraph (5)(D), not later than two months after notification of the vacancy. To the extent possible, a vacancy shall be filled in the same category and term in which the original appointment was made.

4(d)**(7) CHAIRPERSON.--**The chairperson of a Recreation Resource Advisory Committee shall be selected by the majority vote of the members of the Committee.

4(d)**(8) QUORUM.--**Eight members shall constitute a quorum. A quorum must be present to constitute an official meeting of a Recreation Resource Advisory Committee.

4(d)**(9) APPROVAL PROCEDURES**.--A Recreation Resource Advisory Committee shall establish procedures for making recommendations to the Secretary. A recommendation may be submitted to the Secretary only if the recommendation is approved by a majority of the members of the Committee from each of the categories specified in paragraph (5)(D) and general public support for the recommendation is documented.

4(d)**(10) COMPENSATION**.--Members of the Recreation Resource Advisory Committee shall not receive any compensation.

4(d)**(11) PUBLIC PARTICIPATION IN THE RECREATION RESOURCE ADVISORY COMMITTEE.--**

4(d)(11)**(A) NOTICE OF MEETINGS.--**All meetings of a Recreation Resource Advisory Committee shall be announced at least one week in advance in a local newspaper of record and the Federal Register, and shall be open to the public.

4(d)(11)**(B) RECORDS**.--A Recreation Resource Advisory Committee shall maintain records of the meetings of the Recreation Resource Advisory Committee and make the records available for public inspection.

4(d)**(12) FEDERAL ADVISORY COMMITTEE ACT**.--A Recreation Resource Advisory Committee is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

4**(e)** *Miscellaneous Administrative Provisions Regarding Recreation Fees and Recreation Passes*.--

4(e)**(1) NOTICE OF ENTRANCE FEES, STANDARD AMENITY RECREATION FEES, AND PASSES.**--The Secretary shall post clear notice of any entrance fee, standard amenity recreation fee, and available recreation passes at appropriate locations in each unit or area of a Federal land management agency where an entrance fee or a standard amenity recreation fee is charged. The Secretary shall include such notice in publications distributed at the unit or area.

4(e)**(2) NOTICE OF RECREATION FEE PROJECTS**.--To the extent practicable, the Secretary shall post clear notice of locations where work is performed using recreation fee or recreation pass revenues collected under this Act.

**SEC. 5. RECREATION PASSES.**

5**(a)** *America the Beautiful--the National Parks and Federal Recreational Lands Pass*.-

**Policy: Section 5(a)**
Each agency, using the authority in the Act, shall ensure that the America the Beautiful Pass, including any passes developed pursuant to Section 5(b)(1-2) covers the entrance fee and standard amenity recreation fee in a manner consistent with the standard definitions and the criteria set out under Section 3 of the Act for all its units collecting recreation fees.

5(a)**(1) AVAILABILITY AND USE**.--The Secretaries shall establish, and may charge a fee for, an interagency national pass to be known as the ``America the Beautiful--the National Parks and Federal Recreational Lands Pass", which shall cover the entrance fee and standard amenity recreation fee for all Federal recreational lands and waters for which an entrance fee or a standard amenity recreation fee is charged.

5(a)**(2) IMAGE COMPETITION FOR RECREATION PASS**.--The Secretaries shall hold an annual competition to select the image to be used on the National Parks and Federal Recreational Lands Pass for a year. The competition shall be open to the public and used as a means to educate the American people about Federal recreational lands and waters.

5(a)**(3) NOTICE OF ESTABLISHMENT.**--The Secretaries shall publish a notice in the Federal Register when the National Parks and Federal Recreational Lands Pass is first established and available for purchase.

5(a)**(4) DURATION.**--The National Parks and Federal Recreational Lands Pass shall be valid for a period of 12 months from the date of the issuance of the recreation pass to a passholder, except in the case of the age and disability discounted passes issued under subsection (b).

5(a)**(5) PRICE**.--The Secretaries shall establish the price at which the National Parks and Federal Recreational Lands Pass will be sold to the public.

5(a)**(6) SALES LOCATIONS AND MARKETING.--**

5(a)(6)**(A) IN GENERAL.**--The Secretary shall sell the National Parks and Federal Recreational Lands Pass at all Federal recreational lands and waters at which an entrance fee or a standard amenity recreation fee is charged and at such other locations as the Secretaries consider appropriate and feasible.

5(a)(6)**(B) USE OF VENDORS.**--The Secretary may enter into fee management agreements as provided in section 6.

5(a)(6)**(C) MARKETING**.--The Secretaries shall take such actions as are appropriate to provide for the active marketing of the National Parks and Federal Recreational Lands Pass.

5(a)**(7) ADMINISTRATIVE GUIDELINES**.--The Secretaries shall issue guidelines on administration of the National Parks and Federal Recreational Lands Pass, which shall include agreement on price, the distribution of revenues between the Federal land management agencies, the sharing of costs, benefits provided, marketing and design, adequate documentation for age and disability discounts under subsection (b), and the issuance of that recreation pass to volunteers. The Secretaries shall take into consideration all relevant visitor and sales data available in establishing the guidelines.

5(a)**(8) DEVELOPMENT AND IMPLEMENTATION AGREEMENTS**.--The Secretaries may enter into cooperative agreements with governmental and nongovernmental entities for the development and implementation of the National Parks and Federal Recreational Lands Pass Program.

5(a)**(9) PROHIBITION ON OTHER NATIONAL RECREATION PASSES**.--The Secretary may not establish any national recreation pass, except as provided in this section.

5**(b)** *Discounted Passes*.--

5(b)**(1) AGE DISCOUNT.**--The Secretary shall make the National Parks and Federal Recreational Lands Pass available, at a cost of $10.00, to any United States citizen or person domiciled in the United States who is 62 years of age or older, if the citizen or person provides adequate proof of such age and such citizenship or residency. The National Parks and Federal Recreational Lands Pass made available under this subsection shall be valid for the lifetime of the pass holder.

5(b)**(2) DISABILITY DISCOUNT.**--The Secretary shall make the National Parks and Federal Recreational Lands Pass available, without charge, to any United States citizen or person domiciled in the United States who has been medically determined to be permanently disabled for purposes of section 7(20)(B)(i)of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)(B)(i)), if the citizen or person provides adequate proof of the disability and such citizenship or residency. The National Parks and Federal Recreational Lands Pass made available under this subsection shall be valid for the lifetime of the passholder.

5**(c)** *Site-Specific Agency Passes*.--The Secretary may establish and charge a fee for a site-specific pass that will cover the entrance fee or standard amenity recreation fee for particular Federal recreational lands and waters for a specified period not to exceed 12 months.

**Policy: Section 5(c)**
The Secretary delegates to the individual agencies the authority for policy development and implementation of site-specific and regional multientity passes. Each agency will identify the existing site-specific and regional multientity pass agreements, the terms of these agreements, and period covered by these agreements.

5**(d)** *Regional Multientity Passes*.--

5(d)**(1) PASSES AUTHORIZED**.--The Secretary may establish and charge a fee for a regional multientity pass that will be accepted by one or more Federal land management agencies or by one or more governmental or nongovernmental entities for a specified period not to exceed 12 months. To include a Federal land management agency or governmental or nongovernmental entity over which the Secretary does not have jurisdiction, the Secretary shall obtain the consent of the head of such agency or entity.

5(d)**(2) REGIONAL MULTIENTITY PASS AGREEMENT**.--In order to establish a regional multientity pass under this subsection, the Secretary shall enter into a regional multientity pass agreement with all the participating agencies or entities on price, the distribution of revenues between participating agencies or entities, the sharing of costs, benefits provided, marketing and design, and the issuance of the pass to volunteers. The Secretary shall take into consideration all relevant visitor and sales data available when entering into this agreement.

5**(e)** *Discounted or Free Admission Days or Use*.--The Secretary may provide for a discounted or free admission day or use of Federal recreational lands and waters.

5**(f)** *Effect on Existing Passports and Permits*.--

5(f)**(1) EXISTING PASSPORTS.**--A passport issued under section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*-6a) or title VI of the National Parks Omnibus Management Act of 1998 (Public Law 105-391; 16 U.S.C. 5991-5995), such as the Golden Eagle Passport, the Golden Age Passport, the Golden Access Passport, and the National Parks Passport, that was valid on the day before the publication of the Federal Register notice required under subsection (a)(3) shall be valid in accordance with the terms agreed to at the time of issuance of the passport, to the extent practicable, and remain in effect until expired, lost, or stolen.

5(f)**(2) PERMITS.**--A permit issued under section 4 of the Land and Water Conservation Fund Act of 1965 that was valid on the day before the date of the enactment of this Act shall be valid and remain in effect until expired, revoked, or suspended.

**SEC. 6. COOPERATIVE AGREEMENTS.**

6**(a)** *Fee Management Agreement*.--Notwithstanding chapter 63 of title 31, United States Code, the Secretary may enter into a fee management agreement, including a contract, which may provide for a reasonable commission, reimbursement, or discount, with the following entities for the following purposes:

6(a)**(1)** With any governmental or nongovernmental entity, including those in a gateway community, for the purpose of obtaining fee collection and processing services, including visitor reservation services.

6(a)**(2)** With any governmental or nongovernmental entity, including those in a gateway community, for the purpose of obtaining emergency medical services.

6(a)**(3)** With any governmental entity, including those in a gateway community, to obtain law enforcement services.

6**(b)** *Revenue Sharing*.--A State or legal subdivision of a State that enters into an agreement with the Secretary under subsection (a) may share in a percentage of the revenues collected at the site in accordance with that fee management agreement.

6**(c)** *County Proposals*.--The Secretary shall consider any proposal submitted by a county to provide services described in subsection (a). If the Secretary decides not to enter into a fee management agreement with the county under subsection (a), the Secretary shall notify the county in writing of the decision, identifying the reasons for the decision. The fee management agreement may include cooperative site planning and management provisions.

**Policy: Section 6(a)-(c)**
**The Secretary delegates to the individual agencies the authority for policy development and implementation of Cooperative Agreements.** Each agency will identify the appropriate management tool (business plan or implementation plan) to be utilized by each of its units to identify pending or signed cooperative agreements. Each agency will be prepared to identify for the Secretary the existing cooperative agreements, the terms of these agreements, and period covered by these agreements.

**6(a)** ***Fee Management Agreement*** – By exempting agencies from Title 31, Chapter 63 in the United States Code that deals with procurement contracts, grant and cooperative agreements, this section grants broader latitude for agencies to enter into fee management agreements/contracts with governmental or nongovernmental entities, including those in gateway communities for fee collection, fee processing (including reservation services pursuant to Office of Budget and Management (OMB) Circular # M-03-03), and for emergency medical services. Agencies may enter into an agreement/contract with any governmental entity, including those in gateway communities for law enforcement services. Such agreement may provide a reasonable commission, reimbursement, or discount.

**6(b)** ***Revenue Sharing*** – A state or legal subdivision thereof (county, parish, borough, township, etc.) that enters into an agreement with a participating Federal agency may share the revenue collected on site as delineated in the fee management agreement.

**6(c)** ***County Proposals*** – The respective agency will send a written response within 2 months of the request to any county that submits a proposal as listed in Section 6(a)(1)-(3). The response will include reason(s) for any decision made to reject the proposal. Fee management agreements with counties may include cooperative site planning and management provisions.

## SEC. 7. SPECIAL ACCOUNT AND DISTRIBUTION OF FEES AND REVENUES.

7**(a)** *Special Account*.--The Secretary of the Treasury shall establish a special account in the Treasury for each Federal land management agency.

7**(b)** *Deposits*.--Subject to subsections (c), (d), and (e), revenues collected by each Federal land management agency under this Act shall--

7(b)**(1)** be deposited in its special account; and

7(b)**(2)** remain available for expenditure, without further appropriation, until expended.

7**(c)** *Distribution of Recreation Fees and Single-Site Agency Pass Revenues*.—

7(c)**(1) LOCAL DISTRIBUTION OF FUNDS**.--

7(c)(1)**(A) RETENTION OF REVENUES.**--Not less than 80 percent of the recreation fees and site-specific agency pass revenues collected at a specific unit or area of a Federal land management agency shall remain available for expenditure, without further appropriation, until expended at that unit or area.

7(c)(1)**(B) REDUCTION**.--The Secretary may reduce the percentage allocation otherwise applicable under subparagraph (A) to a unit or area of a Federal land management agency, but not below 60 percent, for a fiscal year if the Secretary determines that the revenues collected at the unit or area exceed the reasonable needs of the unit or area for which expenditures may be made for that fiscal year.

7(c)**(2) AGENCY-WIDE DISTRIBUTION OF FUNDS.**--The balance of the recreation fees and site-specific agency pass revenues collected at a specific unit or area of a Federal land management and not distributed in accordance with paragraph (1) shall remain available to that Federal land management agency for expenditure on an agency-wide basis, without further

appropriation, until expended.

**Policy: Section 7(c)**
The Secretary delegates to the individual agencies the authority for policy development and implementation. The individual agencies will develop and implement policy for the following revenue distribution decisions:

**7(c)(1)(A)** ***Retention of Revenues:*** The retention of revenues will not be less than 80 percent of the recreation fees and site-specific pass revenues at that unit;

**7(c)(1)(B)** ***Reduction:*** Each agency will identify the metrics and benchmarks required to identify when a unit's revenue retention may be reduced to as low as 60 percent; and

**7(c)(2)** ***Agency-wide Distribution of Funds:*** Each agency will identify the distribution method and report on the expenditure of any revenues retained for agency-wide use under Section 9: Budgetary Data.

7(c)**(3) OTHER AMOUNTS.**--Other amounts collected at other locations, including recreation fees collected by other entities or for a reservation service, shall remain available, without further appropriation, until expended in accordance with guidelines established by the Secretary.

7**(d)** *Distribution of National Parks and Federal Recreational Lands Pass Revenues*.--Revenues collected from the sale of the National Parks and Federal Recreational Lands Pass shall be deposited in the special accounts established for the Federal land management agencies in accordance with the guidelines issued under section 5(a)(7).

7**(e)** *Distribution of Regional Multientity Pass Revenues*.--Revenues collected from the sale of a regional multientity pass authorized under section 5(d) shall be deposited in each participating Federal land management agency's special account in accordance with the terms of the region multientity pass agreement for the regional multientity pass.

**Policy: Section 7(d) and Section 7(e)**
Each agency will identify the distribution of funds and report on the expenditures of the revenues from the sales of the America the Beautiful Passes and regional multientity passes under Section 9: Budgetary Data.

## SEC. 8. EXPENDITURES.

**Policy: Section 8**
The Secretary delegates to the individual agencies the authority for policy development and implementation that ensures expenditures are within the identified expenditure categories and the definitions developed for this document**.**

8**(a)** *Use of Fees at Specific Site or Area*.--Amounts available for expenditure at a specific site or area--

8(a)**(1)** shall be accounted for separately from the amounts collected;

**Policy: Section 8(a)(1)**
Each of the Department of Interior agencies will use a dual accounting system, with a collection account and an expenditure account, in order to successfully track collections and track expenditures. The United States Forest Service does not use a dual accounting system, but is capable of accounting for collections and expenditures separately. An agency cannot spend from a collection account, but only from an expenditure account.

8(a)**(2)** may be distributed agency-wide; and

8(a)**(3)** shall be used only for--

8(a)(3)**(A)** repair, maintenance, and facility enhancement related directly to visitor enjoyment, visitor access, and health and safety;

**Definition: Section 8(a)(3)(A)**
***Health and Safety:*** The repetition of the terms "related to" and "visitor" in the language of the law leads to the determination that the intent is facility expenditures on visitor health and safety.

8(a)(3)**(B)** interpretation, visitor information, visitor service, visitor needs assessments, and signs;

8(a)(3)**(C)** habitat restoration directly related to wildlife-dependent recreation that is limited to hunting, fishing, wildlife observation, or photography;

8(a)(3)**(D)** law enforcement related to public use and recreation;

8(a)(3)**(E)** direct operating or capital costs associated with the recreation fee program;

**Definition: Section 8(a)(3)(E)**
***Direct Costs:*** The direct operating or capital costs, also known as "cost of collection," associated with the recreation fee program are the costs that occur as a direct result of collecting, remitting, transporting, protecting, storing, or securing fee funds at a site. These expenses may include:

- Salaries, benefits, and training;
- Fee collection equipment and upkeep;
- Security services and equipment; and
- Communication needs such as signage and phones.

Section 8(a)(3)(E) establishes a distinct expenditure category for the direct operating cost or cost of collection for accountability in reporting.

**Policy: Section 8(a)(3)(E)**
Performance measures established for the Recreational Fee Demonstration Program for each agency in the Department of Interior include a target for cost of collection that is a percentage of the agencies annual fee receipts. The performance measure targets are:

| Agency | FY 2005 | FY 2006 |
|---|---|---|
| Bureau of Land Management | 15% | 15% |
| Fish and Wildlife | 20% | 20% |
| National Park Service | 25% | 26% |

8(a)(3)**(F)** a fee management agreement established under section 6(a) or a visitor reservation service.

**Definition: Section 8(a)(3)(F)**
***Fee Management Agreement:*** Section 8(a)(3)(F) establishes a distinct expenditure category for the cost of implementing a fee management agreement and a visitor reservation service, and will be accounted for and reported as a separate expenditure category.

8**(b)** *Limitation on Use of Fees*.--The Secretary may not use any recreation fees for biological monitoring on Federal recreational lands and waters under the Endangered Species Act of 1973 for listed or candidate species.

**Definition: Section 8(b)**
***Limitation on Use of Fees:*** National Environmental Protection Act (NEPA) requires one-time actions termed survey, clearance, or inventory of the listed or candidate species as a part of the compliance process. These one time actions are not considered monitoring as defined under the Endangered Species Act (ESA). Under the ESA, "monitoring" is defined as a distinct action with an established frequency or repetition, and monitoring is associated with recovery activities for listed or candidate species. Resulting from the NEPA process, mitigation actions may be required to insure that a project does not jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat.

**Policy: Section 8(b)**
Each participating agency will ensure that no recreation fees are being expended for actions on biological monitoring under the Endangered Species Act for listed or candidate species. By policy, the excluded activities associated with listed or candidate species under the Endangered Species Act are expanded to include the writing of ESA-required recovery plans and mitigation that is generated by the implementation of a recovery plan. NEPA establishes a process that an agency must undertake prior to proceeding with certain visitor events or activities or with projects to enhance visitor facilities and services. In such cases, the definition and policy in this document allow for the use of recreation fees for surveys, inventories, and mitigation actions during an event, activity, or project execution that are required as a result of the NEPA process, even if the actions may be consistent with a recovery plan.

**Exception to Policy on Recovery Plan Mitigation:** Exceptions to the prohibition of using fees for ESA recovery plans include the use of the fees on expenditures specifically provided for under Section 8(a)(3). For example, recovery plans may include expenditures that also provide for "habitat restoration directly related to wildlife-dependent recreation that is limited to hunting, fishing, wildlife observation or photography," an expenditure explicitly authorized in Section 8(a)(3)(C). Where such overlap occurs, an explanation should be provided that identifies the expenditure provision in the Act that authorizes the activity and how the expenditure enhances the visitor experience.

Each agency will require the information used to determine the use of this policy exception is documented in the justification and determination of approval of the expenditure. The agency will maintain and have readily available the documentation supporting the approval of the expenditure as within the law and the policy.

8**(c)** *Administration, Overhead, and Indirect Costs*.--The Secretary may use not more than an average of 15 percent of total revenues collected under this Act for administration, overhead, and indirect costs related to the recreation fee program by that Secretary.

**Definition: Section 8(c)**
***15 Percent*:** The 15 percent includes only those costs not listed as separate expenditure activities under Section 8(a)(3)(A-F) and 8(d), but which are necessary for the administration of the recreation fee program. Examples of administration, overhead, and indirect costs include:

- Budget development and program planning to include the administration of regional and national recreation fee programs;
- Administrative support (e.g., procurement, contracting, office services, property management, preparation, and distribution of reports, and document control); and
- Public notification and information.

They do not include the costs which can be directly attributed to providing a specific service or executing a specific project such as a campground rehabilitation project.

**Policy: Section 8(c)**
Each agency will limit Administration, Overhead, and Indirect costs to no more than 15 percent of their total revenues. The National Park Service will be reporting America the Beautiful Pass start-up costs support under this category until the transitional exception begins. During this time period, National Park Service may exceed 15 percent.

8**(d)** *Transitional Exception*.--Notwithstanding any other provision of this Act, the Secretary may use amounts available in the special account of a Federal land management agency to supplement administration and marketing costs associated with—

**Definition: Section 8(d)**
***Transitional Exception:*** Establishes a distinct expenditure category for the costs of implementing the America the Beautiful Pass and for regional multientity passes. When guidelines and/or agreements are in place, these costs will be accounted for and reported as a separate expenditure category for the first 5 years after the guidelines and/or agreements are in place.

**Policy: Section 8(d)**
The Secretary will use amounts available in the special accounts of the National Park Service to support administration and marketing costs associated with the start-up of the America the Beautiful Pass authorized under this Act until America the Beautiful Pass revenues are available. These support costs will be repaid to the National Park Service from the America the Beautiful Pass' centralized sales once the sales of the America the Beautiful Pass generates enough revenue to repay the National Park Service in full.

8(d)**(1)** the National Parks and Federal Recreational Lands Pass during the five-year period beginning on the date the joint guidelines are issued under section 5(a)(7); and

8(d)**(2)** a regional multientity pass authorized section 5(d) during the five-year period beginning on the date the regional multientity pass agreement for that recreation pass takes effect.

**SEC. 9. REPORTS.**

Not later than May 1, 2006, and every three years thereafter, the Secretary shall submit to the Congress a report detailing the status of the recreation fee program conducted for Federal recreational lands and waters, including an evaluation of the recreation fee program, examples of projects that were funded using such fees, and future projects and programs for funding with fees, and containing any recommendations for changes in the overall fee system.

**Policy: Section 9**
Each December, agencies will continue to annually report budgetary information including actual and planned obligations within the Act's expenditure categories (Section 8(a)(3)(A-F), Section 8(c) and Section 8(d)(1-2)) as part of the budget formulations process and per the Department of Interior's Recreation Fee Program Appendix.

The Secretary delegates to the individual agencies the authority for policy development and implementation that ensures their ability to prepare an Interagency Report to Congress on a 3-year cycle. The first report due May 1, 2006, will include the FY 2004 and the FY 2005 transition period from the Recreation Fee Demonstration law to REA.

**Each agency** will describe the status of the Recreation Fee Program and include:

- Budgetary Data
  - Revenue, obligations or expenditures, balances by agency by year;
  - Revenue, cost of collection, and obligations or expenditures by site by year; and
  - Visitation by site by year.
- REA Implementation
  - Narrative on how REA is being implemented;
  Policy and guidance issued;
  - Changes in the number of sites (introduced, eliminated, reconfigured);
  - Progress report on America the Beautiful pass implementation;
  - Changes in multientity and regional passes;
  - Narrative on the enforcement of Section 8(b) and Section 15; and
  - Areas of law that need clarification and recommendations for changes in overall fee systems.
- Expenditures
  - By year, the number of projects and obligations in each of the REA categories as listed in Section 8(a)(3)(A-F), Section 8(c) and Section 8(d)(1-2);
  - 15 percent Overhead, Administrative, and Indirect Costs; and
  - Planned projects, services, and summary data tables/ graphs of 5-Year planned projects presented in an easy to understand format, such as tables and graphs.

## SEC. 10. SUNSET PROVISION

The authority of the Secretary to carry out this Act shall terminate 10 years after the date of the enactment of this Act.

## SEC. 11. VOLUNTEERS.

11**(a)** *Authority to Use Volunteers*.--The Secretary may use volunteers, as appropriate, to collect recreation fees and sell recreation passes.

11**(b)** *Waiver or Discount of Fees; Site-Specific Agency Pass*.--In exchange for volunteer services, the Secretary may waive or discount an entrance fee, standard amenity recreation fee, or an expanded amenity recreation fee that would otherwise apply to the volunteer or issue to the volunteer a site-specific agency pass authorized under section 5(c).

11**(c)** *National Parks and Federal Recreational Lands Pass*.--In accordance with the guidelines issued under section 5(a)(7), the Secretaries may issue a National Parks and Federal Recreational Lands Pass to a volunteer in exchange for significant volunteer services performed by the volunteer.

11**(d)** *Regional Multientity Passes*.--The Secretary may issue a regional multientity pass authorized under section 5(d) to a volunteer in exchange for significant volunteer services

performed by the volunteer, if the regional multientity pass agreement under which the regional multientity pass was established provides for the issuance of the pass to volunteers.

**SEC. 12. ENFORCEMENT AND PROTECTION OF RECEIPTS.**

12**(a)** *Enforcement Authority*.--The Secretary concerned shall enforce payment of the recreation fees authorized by this Act.

12**(b)** *Evidence of Nonpayment*.--If the display of proof of payment of a recreation fee, or the payment of a recreation fee within a certain time period is required, failure to display such proof as required or to pay the recreation fee within the time period specified shall constitute nonpayment.

12**(c)** *Joint Liability*.--The registered owner and any occupant of a vehicle charged with a nonpayment violation involving the vehicle shall be jointly liable for penalties imposed under this section, unless the registered owner can show that the vehicle was used without the registered owner's express or implied permission.

12**(d)** *Limitation on Penalties*.--The failure to pay a recreation fee established under this Act shall be punishable as a Class A or Class B misdemeanor, except that in the case of a first offense of nonpayment, the fine imposed may not exceed $100, notwithstanding section 3571(e) of title 18, United States Code.

**SEC. 13. REPEAL OF SUPERSEDED ADMISSION AND USE FEE AUTHORITIES.**

13**(a)** *Land and Water Conservation Fund Act*.--Subsections (a), (b), (c), (d), (e), (f), (g), and (i) of section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*-6a et seq.) are repealed, except that the Secretary may continue to issue Golden Eagle Passports, Golden Age Passports, and Golden Access Passports under such section until the date the notice required by section 5(a)(3) is published in the Federal Register regarding the establishment of the National Parks and Federal Recreational Lands Pass.

13**(b)** *Recreational Fee Demonstration Program*.--Section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104-134; 16 U.S.C. 460*l*-6a), is repealed.

13**(c)** *Admission Permits for Refuge Units*.--Section 201 of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3911) is repealed.

13**(d)** *National Park Passport, Golden Eagle Passport, Golden Age Passport, and Golden Access Passport*.--Effective on the date the notice required by section 5(a)(3) is published in the Federal Register, the following provisions of law authorizing the establishment of a national park passport program or the establishment and sale of a national park passport, Golden Eagle Passport, Golden Age Passport, or Golden Access Passport are repealed:

13(d)**(1)** Section 502 of the National Parks Omnibus Management Act of 1998 (Public Law 105-391; 16 U.S.C. 5982).

13(d)**(2)** Title VI of the National Parks Omnibus Management Act of 1998 (Public Law 105-391; 16 U.S.C. 5991-5995).

13**(e)** *Treatment of Unobligated Funds*.--

13(e)**(1) LAND AND WATER CONSERVATION FUND SPECIAL ACCOUNTS**.--Amounts in the special accounts established under section 4(i)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*-6a(i)(1)) for Federal land management agencies

that are unobligated on the date of the enactment of this Act shall be transferred to the appropriate special account established under section 7 and shall be available to the Secretary in accordance with this Act. A special account established under section 4(i)(1) of the Land and Water Conservation Fund Act of 1965 for a Federal agency that is not a Federal land management area, and the use of such special account, is not affected by the repeal of section 4 of the Land and Water Conservation Fund Act of 1965 by subsection (a) of this section.

13(e)**(2) NATIONAL PARKS PASSPORT**.--Any funds collected under title VI of the National Parks Omnibus Management Act of 1998 (Public Law 105-391; 16 U.S.C. 5991-5995) that are unobligated on the day before the publication of the Federal Register notice required under section 5(a)(3) shall be transferred to the special account of the National Park Service for use in accordance with this Act. The Secretary of the Interior may use amounts available in that special account to pay any outstanding administration, marketing, or close-out costs associated with the national parks passport.

13(e)**(3) RECREATIONAL FEE DEMONSTRATION PROGRAM**.--Any funds collected in accordance with section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104-134; 16 U.S.C. 460*l*-6a), that are unobligated on the day before the date of the enactment of this Act shall be transferred to the appropriate special account and shall be available to the Secretary in accordance with this Act.

13(e)**(4) ADMISSION PERMITS FOR REFUGE UNITS**.--Any funds collected in accordance with section 201 of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3911) that are available as provided in subsection (c)(A) of such section and are unobligated on the day before the date of the enactment of this Act shall be transferred to the special account of the United States Fish and Wildlife Service for use in accordance with this Act.

13**(f)** *Effect of Regulations*.--A regulation or policy issued under a provision of law repealed by this section shall remain in effect to the extent such a regulation or policy is consistent with the provisions of this Act until the Secretary issues a regulation, guideline, or policy under this Act that supersedes the earlier regulation.

**SEC. 14. RELATION TO OTHER LAWS AND FEE COLLECTION AUTHORITIES.**

14**(a)** *Federal and State Laws Unaffected*.--Nothing in this Act shall authorize Federal hunting or fishing licenses or fees or charges for commercial or other activities not related to recreation, affect any rights or authority of the States with respect to fish and wildlife, or repeal or modify any provision of law that permits States or political subdivisions of States to share in the revenues from Federal lands or, except as provided in subsection (b), any provision of law that provides that any fees or charges collected at particular Federal areas be used for or credited to specific purposes or special funds as authorized by that provision of law.

14**(b)** *Relation to Revenue Allocation Laws*.--Amounts collected under this Act, and the existence of a fee management agreement with a governmental entity under section 6(a), may not be taken into account for the purposes of any of the following laws:

14(b)**(1)** The sixth paragraph under the heading ``**FOREST SERVICE**" in the Act of May 23, 1908 (16 U.S.C. 500).

14(b)**(2)** Section 13 of the Act of March 1, 1911 (16 U.S.C. 500; commonly known as the Weeks Act).

14(b)**(3)** The fourteenth paragraph under the heading ``**FOREST SERVICE**" in the Act of March 4, 1913 (16 U.S.C. 501).

14(b)**(4)** Section 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012).

14(b)**(5)** Title II of the Act of August 8, 1937, and the Act of May 24, 1939 (43 U.S.C. 1181f et seq.).

14(b)**(6)** Section 6 of the Act of June 14, 1926 (43 U.S.C. 869-4).

14(b)**(7)** Chapter 69 of title 31, United States Code.

14(b)**(8)** Section 401 of the Act of June 15, 1935 (16 U.S.C. 715s; commonly known as the Refuge Revenue Sharing Act).

14(b)**(9)** The Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106-393; 16 U.S.C. 500 note), except that the exception made for such Act by this subsection is unique and is not intended to be construed as precedent for amounts collected from the use of Federal lands under any other provision of law.

14(b)**(10)** Section 2 of the Boulder Canyon Project Adjustment Act (43 U.S.C. 618a).

14(b)**(11)** The Federal Water Project Recreation Act (16 U.S.C. 460*l*-12 et seq.).

14(b)**(12)** The first section of the Act of June 17, 1902, as amended or supplemented (43 U.S.C. 391).

14(b)**(13)** The Act of February 25, 1920 (30 U.S.C. 181 et seq.; commonly known as the Mineral Leasing Act).

14(b)**(14)** Section 4(e) of the Southern Nevada Public Land Management Act of 1998 (Public Law 105-263; 31 U.S.C. 6901 note).

14(b)**(15)** Section 5(a) of the Lincoln County Land Act of 2000 (Public Law 106-298; 114 Stat. 1047).

14(b)**(16)** Any other provision of law relating to revenue allocation.

14**(c)** *Consideration of Other Funds Collected*.--Amounts collected under any other law may not be disbursed under this Act.

14**(d)** *Sole Recreation Fee Authority*.--Recreation fees charged under this Act shall be in lieu of fees charged for the same purposes under any other provision of law.

14**(e)** *Fees Charged by Third Parties*.--Notwithstanding any other provision of this Act, a third party may charge a fee for providing a good or service to a visitor of a unit or area of the Federal land management agencies in accordance with any other applicable law or regulation.

14**(f)** *Migratory Bird Hunting Stamp Act*.--Revenues from the stamp established under the Act of March 16, 1934 (16 U.S.C. 718 et seq.; commonly known as the Migratory Bird Hunting Stamp Act or Duck Stamp Act), shall not be covered by this Act.

## SEC. 15. LIMITATION ON USE OF FEES FOR EMPLOYEE BONUSES.

Notwithstanding any other provision of law, fees collected under the authorities of this Act may not be used for employee bonuses.

**Policy: Section 15**
Recreation fees collected under this program may not pay for employee bonuses. The Office of Personnel Management identifies two types of bonuses – recruitment and relocation. For the implementation of REA, the one-time payment of performance-based awards to an employee will be considered a bonus. A Quality Step Increase award will not be considered a bonus since they are embedded as recurring salary. This exception applies only to Quality Step Increase awards for those employees whose job is directly tied to the recreation fee program and whose salary is paid from recreation fee dollars.

**National Park Service/Mar Vista Stables**
**Town hall Meeting**
Saturday, December 12, 2009
10:00AM--12:00AM

**Summary**

**1. People in attendance:**
**Equestrians:** Patty Duffy, Annie Ellicott, Marilyn Garcia, Suzan Canli, Ed Seider, Susanne Crane, Maria Medeiros, Christian Medeiros, Lisa Dunmeyer, Betty Bortin, Tony Stritmatter, Holly Prohaska, Charity Frazier

**Agency Personnel**: Shirwin Smith, GGNRA Management Assistant, Lieutenant Connie Leonard, U. S. Park Police, Marybeth McFarland, GGNRA, Law Enforcement Specialist, Officer Erma Javier, U. S. Park Police

**2. GGNRA overview – lands and law enforcement personnel**
~~**In barn user terms**: the boarder is running east to west where the trail leads off of the beach-- our "up spot."~~

Agency representatives reviewed maps showing GGNRA and Fort Funston boundaries. The boundary between Fort Funston and Thornton Beach was described as following the fence line behind the buildings at the south end of Fort Funston, where the ranger office is located which stretches from Skyline Blvd. west to the water. **In barn user terms**: the GGNRA border runs east to west where the trail leads off of the beach-- our "up spot."

~~The~~ GGNRA Rangers and the U.S. Park Police are responsible for law enforcement and emergency services at Fort Funston, which is part of a patrol area that stretches from Fort Miley south to the boundary of Fort Funston and Thornton State Beach. ~~The~~ California State Park Rangers are responsible for law enforcement at Thornton State Beach.

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The USPP mounted horse patrol has recently begun regular patrols of Fort Funston. They will continue to do this, depending on staffing, etc. The mission of the Horse Mounted Unit is to patrol the area as objective enforcement officers.

**RIDING WITH THE HORSE MOUNTED PATROL**
Although we cannot schedule rides with the Horse Mounted Patrol, it is acceptable to ride with them if you see them on the trails. ~~We are allowed to ride with the Horse Mounted Patrol,~~ B~~b~~ut remember that they are there as enforcement officers first and foremost. S~~s~~how good horse etiquette and make sure they are aware of you if you ride up on them.~~and a~~If you would like to ride along with them, always ask it's OK before joining them ~~and make sure they are aware of you if you ride up on them. We cannot call the unit and schedule a ride with them. If you are there~~

~~and they are there and everyone wants to ride together, then HAPPY TRAILS.~~ **Do know** that they are on duty and are not there to ~~just~~ socialize-- if a situation looks like it is going bad, then get yourself in a safe place so they can do what they need to do without worrying about your safety.

**3. GGNRA Compendium**
This is a 33 page document which outlines rules specific to GGNRA, such as where horses are allowed. It is explained that it is a "living document" that is reviewed annually to address the changing uses and needs of the park. A copy can be provided to you if you would like to read it and it is also on the GGNRA web site http://www.nps.gov/goga/parkmgmt/lawsandpolicies.htm.

**4. Overview and status of dog management in GGNRA**
Dogs can be either on leash or under voice control ~~off leash~~ in Fort Funston.

**Why??**
The GGNRA Advisory Commission made this recommendation to the park in 1979 and the park followed the recommendations for over 20 years. Currently, the NPS is developing a dog management regulation for GGNRA. Due to Federal Court o~~O~~pinion in 2005, until a new dog management rule is established for GGNRA, the 1979 pet policy remains in effect in all areas which were included in that policy. All other areas of the GGNRA are governed by the national NPS rule requiring dogs to be on leash where they are allowed.

**Will there be change?**
The Park service is developing an Environmental Impact Statement that analyzes various alternatives to manage dog walking in GGNRA lands (including Fort Funston, Ocean Beach, etc.). The draft EIS will be out in late Summer/Fall 2010. After the EIS is finalized, a regulation based on the preferred alternative will be put into place. Information about the current dog walking status and the EIS process is on the GGNRA website: www.nps.gov/goga/planyourvisit/pets.htm

**5. Legal questions/definitions**
**a. Definition of Off Leash**
A dog must be wearing a collar at all times and the owner of the dog must be carrying a leash for every dog under his/her care. To be off leash, the dog must be under voice ~~command~~control. There was a discussion as to what "voice ~~command~~control" means. Marybeth said that the idea is that you call the dog and it returns to you in any situation.

**b. Definition of dog incident**
**Criminal**: Any incident which a person involved can be subject to a warning, citation or arrest for violation of a regulation, including if p~~P~~roperty is damaged or a person/animal is injured.

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If someone is seriously hurt on GGNRA land, call ~~911~~415-561-5656, GGNRA's Communications Center first for immediate response. If you are on Thornton State Beach, south of GGNRA land, call 911 or the GGNRA Comm Center. (Just a side note, sometimes it is better to call the barn to call ~~911~~ for you because cell service gets relayed far away.) ~~If the situation is safe, call the emergency number: **415-561-5656**~~

**Non-Criminal:** There is a ~~nuisance~~, ~~but no one is in any apparent danger~~ service related incident. For example, ~~wildlife is being disturbed ),~~ ~~naked people, dog problem~~, a lost pet, cliff rescue, medical emergency, etc. If you can wait, the rangers will be out to meet you and can take a look at what you are reporting, then respond accordingly. If not please leave a call back number with the dispatcher.
415-561-5505 (GGNRA Communications Center non-emergency number)

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**Visitor Complaint:** ~~These are made to the dis~~To make a formal complaint, call the GGNRA Communications Center non-emergency number. ~~patch center and~~ This is ~~are~~ a way we can report general hazards or an issue or problem that affected you while visiting the park, or ~~something~~ that prevented you from having access to the park.
415-561-5505

**c. How to report incidents:**
Decide what sort of incident it is (listed above), make sure you are safe, then make the call. **Please** program all the numbers in your cell phone which you should be carrying on your person, not on the saddle, for every ride.

You will be required to give your name, contact information and the dispatcher will ask you a series of questions to get as much detail as possible, in order to send the appropriate response. In addition, the park is ~~They are~~ compiling data on animal / dog related incidents so it is important that we are prepared to provide as much information as possible.

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**d. Rights of equestrians/rights of dog owners.**
We all have the right to use Fort Funston. That said, it is important to be aware of everyone's safety needs. Dog walkers ~~need to~~ should be aware of horses and make necessary allowances (for instance, recalling their dog). BUT, equestrians ~~need to~~ should also assess situations and use common sense when using the same area--not entering into a situation that could get someone hurt.

**6. Suggestions for interactions with off leash dogs**
**a. How to address dogs running, chasing, barking.**

- Keep your horse facing the dog
- Look for the owner and politely ask them to collect their dog
- Make eye contact with the dog as a show of dominance

- Remain calm-- an agitated person can make an agitated horse.
- When you are safe, call the GGNRA ~~Dispatch~~ Communications Center to report an incident. 415-561-5505 (non-emergency number)
- Pepper spray is used only as a last resort, such as when a dog is actually attacking, or about to attack, your horse. ~~like when the dog is swinging from your horses tail.~~ If the situation allows, tell the dog owner that their dog will be pepper sprayed if it is not collected as soon as possible.

**b. Suggested communications between riders and dog walkers in both non-emergency and emergency situations**

- Be patient, don't engage an anxious dog walker. If ~~enough~~ too much time passes without them taking some action, politely ask them to collect their dog.
- Calmly communicate your needs, for example, "It would be helpful for me if you called your dog."~~"~~
- If you are told that you do not belong in an area, politely inform the person that ~~this~~ Fort Funston is a multi-use area.
- Say "Thank you" to those people who collected their dogs-- it's good PR
- Offer to work with an individual to educate a dog about horses or let a child pet your horse. But ~~A~~always keep safety front in your mind.

Lt. Leonard stressed that interacting with ~~beach goers~~ other visitors in a negative way can result in very explosive situations (she gave some examples).

**7. Education/Outreach Suggestions**

**a. Future dog/ horse "park petiquette" events (introducing dogs to horses, explaining responsibilities of both).**

The idea is to set up training events for both dogs and horses to desensitize them to each other. The equestrians will work with the Fort Funston Dog Walk~~ing~~ers ~~groups~~ to ~~head up~~ organize some of these events.

As equestrians, it was discussed what we can do to help "bomb proof" our horses. Officer Javier talked about what Park Police horses are put through to get them prepared for any situation. She also admitted that some horses should not be in all situations-- they just do not have the temperament for it~~-- they have a police horse that cannot be in parades, nor can some horses go to Fort Funston because they cannot handle the dogs and high level of activity~~. She emphasized that it is important to "know your horse" and what their capabilities are. It was mentioned by Lt. Leonard to know your own skill level as a rider. Lt Leonard clarified that the Park Police cannot give specific training techniques and recommended for those people who need advice/training with their horses, to work with a trained professional who can help the owner ~~to~~ train the horse to overcome ~~their~~ its fears.

**b. What can equestrians do to help educate all users on best shared use**

**behavior? (Fliers, website Q & A, Blogs, Bulletin Board Postings, etc.).**

- Collaborate with dog groups on education and outreach efforts
- Finalize horse/dog FAQ sheet-- was asked to be condensed
- Word of mouth
- Be an equestrian ambassador while out riding

**Action Items**

All equestrians should program the GGRNA emergency~~,~~and non-emergency, and barn numbers into their cell phones

Holly and Shirwin will contact Linda McKay ~~at~~ of the Fort Funston Dog Walkers for help with dog/horse FAQ document.

Shirwin will look into putting up signs, (shared use message in~~"~~ "wind masters") at trail heads in Fort Funston (e.g. Top of Sand Ladder, beginning of Chip Trail).

Shirwin will investigate the possibilities of signs ~~options~~ to show where the dividing line is between Fort Funston and Thornton Beach with changing regulations.

**Post Meeting Follow up.**

Holly Prohaska requested to remain the point person between the equestrians and agencies.

Susanne Crane has been asked to be "back up" to Holly on projects.

An equestrian task force has begun to be formed among the boarders to share some of the work load-- please feel free to jump on board. We are going to have lots of fun!!

Contact and discussions have been opened up with the representatives from the dog groups. They have responded very positively and are eager to meet with us and get events and education happening. We are working on the logistics-- more to follow.

**Thorton State Beach Contact**

Marybeth provided us with the contact information for the Thornton State Park.

~~Contact has been made with~~ Michael Grant, is the Supervising Ranger for the area for California State Parks. He reported that, technically, Thornton Beach is "closed" due to limited funding. He is very supportive of a clean up effort of Thornton beach and the "valley" area. We need to fill out a **volunteer form** (they are on their way) to have a clean up effort. We can let them know the day of the clean up to arrange hauling off the trash we bring up. He has also offered to

provide trash bags.

**Thanks to:** Holly Prohaska, Lisa Dunmeyer, Suzan Canli and Susanne Crane for putting the information in this summary together.

relocated fountain
new valve
911 call box
existing fountain
existing valve
H2O supply line
Schedule 40 PVC
Hang Glider Area
©2009 Google
© 2010 Google
Imagery Date: Sep 11, 2010
37°42'51.76" N 122°30'09.22" W elev 179 ft
Eye alt 433 ft

**Draft Compliance Management Strategy**
**GGNRA dog management plan/EIS**
**8.12.10**

Background:

The compliance management strategy monitors and records observed violations of the Code of Federal Regulation related to dog management, including the new 36 CFR Part 7 special regulation, and redirects resources as needed to address those violations. Noncompliance with federal regulations related to dog management will be met with a variety of management responses.

Timeline:

Monitoring will begin with plan implementation or soon thereafter, but a baseline of numbers of visitors with dogs, type of use, and violations would be established based on months 6 – 18. All sites will be monitored. After one year of monitoring, areas to be monitored will be prioritized based on noncompliance. All areas that are noncompliant with the regulations will be the focus of increased park management actions, as described in the primary management response section below. Monitoring will also inform park management, including law enforcement, when, where, and how to prioritize responses to noncompliance. If the rolling 12 month average for compliance falls below 75%, park management actions as described in the secondary management response will be implemented.

Monitoring will continue in all areas for at least 4 years, although the park may reduce the frequency of monitoring in low use areas to focus on high use areas as needed. Monitoring of an area over a 12 month period is required before an area can be flipped, however, frequency of monitoring may vary over time.

NPS will prepare annual reports documenting monitoring data collected and consequent management actions, when they occur. NPS will release a preliminary report after the first 6 months of monitoring have occurred.

Standard: Compliance with federal regulations applicable to dog management.

Indicators: Noncompliance with federal regulations applicable to dog management (see chart below).

| Vegetation Damage | Wildlife Disturbance | Disturbance to T&E Species | Violation of Areas Closed to Dogs (T/E and Sensitive Habitat) | Violation of Areas Closed to All (T/E and Sensitive Habitat) | Pet Excrement (grid or observations for noncompliance) | Hazardous Condition (aggressive behavior, pet rescues) | Degree of Compliance with special regulation (no dogs, on-leash, ROLA) | Gov't Property Damage | Violation of Areas Closed to Dogs (Safety) |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 36 CFR 2.1 (a) (1) (ii) | 36 CFR 2.2(a)(2) | 36 CFR 2.2 (a) (2), 50 CFR Part 17 | NEW PART 7 SPECIAL REGULATION | 36 CFR 1.5 (f) | 36 CFR 2.15 (a) (5) | 36 CFR 2.34 (a) | NEW 36 CFR PART 7 SPECIAL REGULATION | 36 CFR 2.31 (a) (3) | 36 CFR 1.5 (f), NEW PART 7 SPECIAL REGULATION |

**Comment [MBE1]:** If the plan has a Biological Opinion.

Triggers and management responses:

1. Primary management response: When noncompliance occurs, NPS will respond with focused enforcement of regulations and education (e.g., additional information and regulatory signs and exhibits, brochures and fliers, public meetings, meetings with user groups, etc.), establishment of buffer zones to protect sensitive habitat and species, time/use restrictions, and SUP restrictions.
    a. Areas with the highest rates of noncompliance, and/or sensitive resources, will receive first priority for primary management responses.
    b. Aggressive dogs or unsafe behavior (e.g. resulting in cliff rescues) are treated on an individual, case-by-case basis, and may result in banning the dog from the park.
    c. Management responses related to threatened and endangered species will be governed by the Terms and Conditions described in the Biological Opinion pursuant to the Endangered Species Act, and are separate from the compliance based strategy.

2. Secondary management response: When compliance (measured as a cumulative total of violations per area) falls below 75% (measured by number of dogs per site), over a yearly rolling average (measured by the previous 12 months' data), the area flips – ROLA to on-leash, and/or on-leash to no dogs. The secondary management response would not be implemented immediately following the plan's implementation. The first 6 months would be used to educate the public about the plan and test the monitoring plan. The following 12 months would be used to collect baseline data, at which point a one year rolling average would be used to measure violations. Data will be compiled monthly and then added to the previous 11 months' data to arrive at the yearly rolling average. If monitoring shows that the a simple majority of violations (more than 51%) are occurring in one particular area within a site, such as a ROLA, only that area would flip. If noncompliance is widespread, the entire site would flip to the next most restrictive level.

    FAQ's:

    a. How do law enforcement citations or other violations factor into the plan? While violations will likely occur that are not documented by the monitoring team, including those resulting in law enforcement citations, these do not count towards the cumulative total, because these violations would not be measured against the total number of dogs in an area. However, violations, including citations, may be used to inform the monitoring team where to focus its primary management response.

**Comment [MBE2]:** Suzie, can we have an EA statistician review this section? We especially want to make sure that 1) the way we compile violations for the 75% standard makes sense, 2) that spot monitoring would allow us to do this, 3) that the period of time we average violations over (yearly rolling average) makes sense., and 4) is the terminology OK is there some more appropriate terminology?

b. What are some examples of the compliance based strategy in practice at different periods in time?
    i. Month 15 of the plan: The monitoring team visits Crissy Field at random times of the day and week. The team first counts the number of dogs, then the number of violations, over a pre-set period of time. This information is added together for a cumulative total number of dogs and violations. In 3 more months the monitoring team will have 12 months of data to evaluate for compliance.
    ii. Month 18 of the plan: The monitoring team continues to visit Crissy Field at random times of the day and week. The team first counts the number of dogs, then the number of violations, over a pre-set period of time. This information is added together for a cumulative total number of dogs and violations. If compliance falls below 75% based on the previous 12 months' monitoring data, the area flips.
c. Rationale for 75%:
    i. The dog management plan/EIS and the resulting special regulation, along with existing regulations applicable to dog management, determine appropriate behavior for visitors with dogs within Golden Gate National Recreation Area. NPS does not condone any level of noncompliance, but the primary management response detailed above is sufficient to address noncompliance where it is not widespread. The secondary management response is meant to apply when it is clear both that park management has been unable to reduce noncompliance through conventional means, and when there is widespread noncompliance occurring over a longer period of time. It provides visitors with dogs an additional incentive to comply with the dog regulations, and because it is specific to an individual area, it encourages a communal response to address noncompliance. It places a burden on NPS to first take a proactive approach to dog management by addressing individual violators and through community education and outreach, and not punish the majority for individual or isolated violations. At the same time, this secondary response recognizes that NPS has multiple competing priorities to address with its funding and does not have unlimited resources with which to ensure compliance with dog regulations. Noncompliance that falls below 75% would not be sustainable for park operations, and could only be addressed through a closure.
d. Rationale for 18 month period before an area would initially flip, with one year period of measurement after the initial 18 months:
    i. Need 3 months to educate the public about the plan, and 3 months to begin implementation of the monitoring plan.

ii. Need one year to implement the full range of possible management actions addressing noncompliance as outlined in the primary management response, as well as to have a 12 months of monitoring data.
iii. One year rolling average is measured at the end of each month; action could be taken after any month as long as there are 11 consecutive preceding months of data.

**Draft Compliance Management Strategy**
**GGNRA dog management plan/EIS**
**8.12.10**

Background:

The compliance management strategy ~~provides a~~ will provide the framework for monitoring~~s~~ and recording~~s~~ observed violations of the Code of Federal Regulations ~~related~~ applicable to dog management, including the new 36 CFR Part 7 special regulation, and will guide ~~redirects~~ use of park resources ~~as needed~~ to address those violations. Noncompliance with federal regulations related to dog management will be met with a ~~variety~~ series of management responses.

Timeline:

Monitoring will begin with plan implementation, or soon thereafter.~~, but~~ Over the first 6-18 months of monitoring, a baseline of numbers and rates ~~numbers~~ of visitors with dogs, type of use, and violations would be established ~~based on months 6 – 18~~. All sites in the dog management plan will be monitored. After one year ~~of monitoring~~, ~~areas to be~~ monitoring efforts~~ed~~ may~~will~~ be prioritized and limited to specific areas based~~based~~ on noncompliance and use levels. All areas with demonstrated noncompliance~~that are noncompliant~~ with the regulations will be the focus of ~~increased~~ park management ~~actions~~responses, as described in the primary management response section below. Monitoring also will ~~also~~ inform park management, including law enforcement, and when, where, and how to prioritize responses to noncompliance. If the rolling 12 month average for compliance falls below 75%, park management actions as described in the secondary management response will be implemented.

Monitoring will continue in all areas for at least 4 years, although the park may reduce the frequency of monitoring in low use or high compliance areas to focus on areas with high use or low compliance ~~areas~~ as needed. Monitoring of an area over a 12 month period is required before ~~an area can be flipped~~secondary management responses can be implemented, however, the frequency of monitoring may vary over time.

NPS will prepare annual reports documenting monitoring data collected and any consequent management actions~~, when they occur~~. NPS will release a preliminary report providing baseline data after the first 6 months of monitoring ~~have occurred~~.

Standard: Compliance with federal regulations applicable to dog management.

Indicators: Noncompliance with federal regulations applicable to dog management (see chart below).

**Comment [WWM1]:** I think we need another sentence at the beginning or end of this paragraph to describe the purpose of why we are doing this—to ensure that compliance with new regulations is high—within our range of expectations—and to keep impacts to a reasonable level.
SES – AGREED, BUT ASSUME THE PRECEEDING SECTION WOULD SET THE STAGE AS TO THE GOAL/PURPOSE OF THIS MANAGEMENT STRATEGY.

**Comment [WWM2]:** We should add a sentence that a detailed monitoring plan will be developed to guide the compliance monitoring, data management, and reporting. AGREED

**Comment [WWM3]:** Add what is to be measured.

**Comment [WWM4]:** Regular, consistent??? AGREED.

**Comment [WWM5]:** After what INITIAL (?) period. The timeline is confusing—we should go through and make sure it is consistent with baseline monitoring, possible prioritization of site monitoring, and 12-month rolling average.

**Comment [GOGA6]:** This seems pretty loose – should we/can we be more specific? If we're considering a secondary management response, don't want to base that on 4 monitoring sessions in a 12 month period.

| Vegetation Damage | Wildlife Disturbance | Disturbance to T&E Species | Violation of Areas Closed to Dogs (T/E and Sensitive Habitat) | Violation of Areas Closed to All (T/E and Sensitive Habitat) | Pet Excrement (grid or observations for noncompliance) | Hazardous Condition (aggressive behavior, pet rescues) | Degree of Compliance with special regulation (no dogs, on-leash, ROLA) | Gov't Property Damage | Violation of Areas Closed to Dogs (Safety) |
|---|---|---|---|---|---|---|---|---|---|
| 36 CFR 2.1 (a) (1) (ii) | 36 CFR 2.2(a)(2) | 36 CFR 2.2 (a) (2), 50 CFR Part 17 | NEW PART 7 SPECIAL REGULATION | 36 CFR 1.5 (f) | 36 CFR 2.15 (a) (5) | 36 CFR 2.34 (a) | NEW 36 CFR PART 7 SPECIAL REGULATION | 36 CFR 2.31 (a) (3) | 36 CFR 1.5 (f), NEW PART 7 SPECIAL REGULATION |

**Comment [MBE7]:** If the plan has a Biological Opinion.

Triggers and management responses:

1. Primary management response: When noncompliance is observed at an area~~occurs~~, NPS would weigh appropriate management actions and ~~will~~ would respond from a suite of potential management actions that include: ~~with~~ focused enforcement of regulations, ~~and~~ education (e.g., additional information and regulatory signs and exhibits, brochures and fliers, public meetings, meetings with user groups, etc.), establishment of buffer zones to protect sensitive habitat and species, time/use restrictions, and SUP restrictions.
    a. Areas with the highest rates of noncompliance, and/or sensitive resources, will receive first priority for primary management responses.
    b. Aggressive dogs or unsafe behavior (e.g. resulting in cliff rescues) are treated on an individual, case-by-case basis, and may result in banning a particular~~the~~ dog or dog walker from the park.
    c. Management responses related to threatened and endangered species will be governed by the Terms and Conditions described in the Biological Opinion pursuant to the Endangered Species Act, and are separate from the compliance based strategy.

**Comment [WWM8]:** How will this be done ?

2. Secondary management response: When compliance ~~(measured as a cumulative total of violations per area)~~ falls below 75% (measured as the additive total across indicators of the ~~by the~~ percentage of total dogs violating regulations) ~~- number of dogs per site)~~, over a yearly rolling average (measured by the previous 12 months' data), the area flips to the next more restrictive level of dog management, for example~~—~~ ROLA to on-leash, ~~and/~~or on-leash to no dogs. The secondary management response would not be implemented until after the first 6 months, during which the monitoring plan will be tested and baseline data collection begun. ~~immediately following the plan's implementation. The first~~During those 6 months, the park would ~~be used~~ initiate public education using a variety of formats, to inform the public ~~to educate the public~~ about the new dog management regulation~~plan, and test the monitoring~~

**Comment [MBE9]:** Suzie, can we have an EA statistician review this section? We especially want to make sure that 1) the way we compile violations for the 75% standard makes sense, 2) that spot monitoring would allow us to do this, 3) that the period of time we average violations over (yearly rolling average) makes sense., and 4) is the terminology OK is there some more appropriate terminology?

**Comment [GOGA10]:** What is this in English (for the non biologists among us)?

**Comment [WWM11]:** Check this and make sure this reads correctly with compliance vs. non-compliance. Violations = non compliance

**Comment [WWM12]:** For what period?

~~plan and collect baseline data~~. ~~-~~The following 12 months would be used to collect baseline data, at which point a one year rolling average would be used to measure violations. Data will be compiled monthly and then added to the previous 11 months' data to arrive at the yearly rolling average. If monitoring shows that the a simple majority of violations (more than 51%) are occurring in one particular area within a site, such as a ROLA, only that area would flip. If noncompliance is widespread, the entire site would flip to the next most restrictive level.

FAQ's:

a. How do law enforcement citations or other violations factor into the plan? While violations will likely occur that are not documented by the monitoring team, including those resulting in law enforcement citations, these do not count towards the cumulative total, because these violations would not be measured against the total number of dogs in an area. However, violations, including citations, may be used to inform the monitoring team where to focus its efforts. ~~primary management response~~.

b. What are some examples of the compliance~~-~~-based strategy in practice at different periods in time?

   i. Month 15 of the plan: The monitoring team visits ~~Crissy Field~~a specific site at random times of the day and week. The team will~~first~~ count~~s~~ the total number of dogs and types of use over a pre-set monitoring period, while also recording~~, then~~ the number of violations~~, over a pre-set period of time~~. This information will be complied with ~~other~~ the preceding months' monitoring data~~is added together for~~ to develop a cumulative total number of dogs and violations. In 3 more months the monitoring team will have 12 months of data to evaluate for compliance.

   ii. Month 18 of the plan: The monitoring team has continued~~s~~ to visit this specific site ~~Crissy Field~~ at random times of the day and week, following the same monitoring protocols as noted above~~. The team first counts the number of dogs, then the number of violations, over a pre-set period of time. This information will be complied with other monitoring data to develop a~~is added together for a cumulative total number of dogs and violations.~~ If compliance falls below 75% based on the previous 12 months' monitoring data, the area management will change to the next most restrictive dog management guideline~~flips~~.

c. Rationale for 75%:

   i. The dog management plan/EIS and the resulting special regulation, along with existing regulations applicable to dog management, determine appropriate behavior for visitors with dogs within Golden Gate National Recreation Area. NPS does not condone any level of noncompliance, ~~but~~ and the primary management response detailed above is sufficient to address noncompliance where it is not widespread. The secondary management response is meant to

**Comment [GOGA13]:** But it would only flip if primary management actions had failed.

**Comment [WWM14]:** How do we deal with noncompliance at no dog areas? Esp. if can't tie it to adjacent ROLA or on-leash area? Ocean Beach?

**Comment [WWM15]:** And support

**Comment [WWM16]:** These would be planned and scheduled—though would likely be assigned randomly.

**Comment [WWM17]:** We also said we would likely record numbers of people and numbers of dogs per person.

**Comment [GOGA18]:** Suggest we not name a site..

apply when it is clear both that park management has been unable to reduce noncompliance through conventional means, and when there is continued and widespread noncompliance occurring over a longer period of time. It provides visitors with dogs an additional incentive to comply with the dog regulations, and because it is specific to an individual area, it encourages a communal response to address noncompliance. It places a burden on NPS to ~~first~~ both take an initial, proactive approach to dog management by addressing individual violators and by increasing public awareness through community education and outreach, and not punish the majority for individual or isolated violations. At the same time, this secondary response recognizes that NPS has multiple competing priorities to address with its funding and does not have unlimited resources with which to ensure compliance with dog regulations. Noncompliance that ~~falls below~~greater than 75% would not be sustainable for park operations, and could only be addressed through ~~a closure~~increased restrictions.

d. Rationale for 18 month period before a secondary management response could initially be applied ~~an area would initially flip~~, with one year period of measurement after the initial 18 months:
    i. Need 3 months to educate the public about the plan, and 3 months to begin implementation of the monitoring plan.
    ii. Need one year to implement the full range of possible management actions addressing noncompliance as outlined in the primary management response, as well as to have a 12 months of monitoring data.
    iii. One year rolling average is measured at the end of each month; action could be taken after any month as long as there are 11 consecutive preceding months of data.

**Comment [GOGA19]:** Huh? Do you mean one year of measurement after the first 6 mos??

**Comment [WWM20]:** Again check through the dates and make sure consistent.

**Draft Compliance Management Strategy**
**GGNRA dog management plan/EIS**
**8.31.10**

Background:

The compliance management strategy has been designed to ensure that compliance with the Code of Federal Regulations (CFR) applicable to dog management is high. It will provide the framework for monitoring and recording observed CFR violations applicable to dog management, including the new 36 CFR Part 7 special regulation, and will guide use of park resources to address those violations. Noncompliance with federal regulations related to dog management will be met with a series of management responses.

Timeline:

Monitoring will begin with plan implementation, or soon thereafter. A detailed monitoring plan will be developed to guide compliance monitoring, data management, and reporting. All sites in the dog management plan will be monitored. Beginning with initiation of the dog management plan, months 1-3 will be a public education period, and months 3-6 will test the monitoring strategy. A baseline of numbers and rates of visitors with dogs, type of use (on-leash or voice-control), and violations (not citations) will be established during months 6-18. After this baseline has been established, monitoring efforts may be prioritized and limited to specific areas based on noncompliance and use levels. All areas with demonstrated noncompliance with the regulations will be the focus of park management responses, as described in the primary management response section below. Monitoring also will inform park management and law enforcement when, where, and how to prioritize responses to noncompliance. If the rolling 12 month average for compliance falls below 75%, park management actions as described in the secondary management response will be implemented. The initial 12 month rolling average is based on data collected during months 6-18 after plan initiation.

Monitoring will continue in all areas for at least 4 years, although the park may reduce the frequency of monitoring in low use or high compliance areas to focus on areas with high use or low compliance as needed. Monitoring of an area over a 12 month period is required before secondary management responses can be implemented, however, the frequency of monitoring may vary over time.

**Comment [GOGA1]:** This seems pretty loose – should we/can we be more specific? If we're considering a secondary management response, don't want to base that on 4 monitoring sessions in a 12 month period.

MBE: Based on the cost estimate and number of sites, it's estimated that each site would be monitored 1-2/wk. At a minimum, a site would be monitored 4 times in a month, so that would be 48 times before it flipped. I don't think we want to telegraph how often a site may be monitored though.

SES –OK, then how about saying something like: "Regular monitoring of an area over a 12 month period is required…" so that monitoring rigor is implied?

NPS will prepare annual reports documenting monitoring data collected and any consequent management actions. NPS will release a preliminary report providing baseline data after the first 6 months of monitoring (month 12 after plan initiation)..

Standard: Compliance with federal regulations applicable to dog management.

Indicators: Noncompliance with federal regulations applicable to dog management (see chart below).

| Vegetation Damage | Wildlife Disturbance | Disturbance to T&E Species | Violation of Areas Closed to Dogs (T/E and Sensitive Habitat) | Violation of Areas Closed to All (T/E and Sensitive Habitat) | Pet Excrement (grid or observations for noncompliance) | Hazardous Condition (aggressive behavior, pet rescues) | Degree of Compliance with special regulation (no dogs, on-leash, ROLA) | Gov't Property Damage | Violation of Areas Closed to Dogs (Safety) |
|---|---|---|---|---|---|---|---|---|---|
| 36 CFR 2.1 (a) (1) (ii) | 36 CFR 2.2(a)(2) | 36 CFR 2.2 (a) (2), 50 CFR Part 17 | NEW PART 7 SPECIAL REGULATION | 36 CFR 1.5 (f) | 36 CFR 2.15 (a) (5) | 36 CFR 2.34 (a) | NEW 36 CFR PART 7 SPECIAL REGULATION | 36 CFR 2.31 (a) (3) | 36 CFR 1.5 (f), NEW PART 7 SPECIAL REGULATION |

**Comment [MBE2]:** If the plan has a Biological Opinion.

Triggers and management responses:

1. Primary management response: When noncompliance is observed at an area, NPS would weigh appropriate management actions and would respond from a suite of potential management actions that include: focused enforcement of regulations, education (e.g., additional information and regulatory signs and exhibits, brochures and fliers, public meetings, meetings with user groups, etc.), establishment of buffer zones to protect sensitive habitat and species, time/use restrictions, and SUP restrictions.
    a. Areas with the highest rates of noncompliance, and/or sensitive resources, will receive first priority for primary management responses.
    b. Aggressive dogs or unsafe behavior (e.g. resulting in cliff rescues) are treated on an individual, case-by-case basis, and may result in banning a particular dog or dog walker from the park.
    c. Management responses related to threatened and endangered species will be governed by the Terms and Conditions described in the Biological Opinion pursuant to the Endangered Species Act, and are separate from the compliance based strategy.

**Comment [WWM3]:** How will this be done ?

MBE: Not sure about the dogwalker part. Seems like people only get banned for egregious violations – would this qualify? If it does, don't know that we need to go into detail on how that would happen here. BARBARA?

2. Secondary management response: When compliance falls below 75% in a site (measured as the percentage of total dogs violating the regulations) over a yearly rolling average (measured by the previous 12 months' data), the area flips to the next more restrictive level of dog management, for example: ROLA to on-leash, or on-leash to no dogs. The secondary management response would not be implemented until after the first 18 months, during which the monitoring plan will be tested and baseline data collection begun. If monitoring shows that a simple majority of violations (more than 51%) are occurring in one particular area within a site, such as a ROLA, only that area would flip, not the entire site. If noncompliance is widespread – not focused in one area only, the entire site would flip to the next most restrictive level.

**Comment [MBE4]:** Suzie, can we have an EA statistician review this section? We especially want to make sure that 1) the way we compile violations for the 75% standard makes sense, 2) that spot monitoring would allow us to do this, 3) that the period of time we average violations over (yearly rolling average) makes sense., and 4) is the terminology OK is there some more appropriate terminology?

**Comment [WWM5]:** How do we deal with noncompliance at no dog areas? Esp. if can't tie it to adjacent ROLA or on-leash area? Ocean Beach?

MBE: Law enforcement and education.

FAQ's:

a. How do law enforcement citations or other violations factor into the plan? While violations will likely occur that are not documented by the monitoring team, including those resulting in law enforcement citations, these do not count towards the cumulative total, because these violations would not be measured against the total number of dogs in an area. However, violations, including citations, may be used to inform the monitoring team where to focus its efforts..
b. What are some examples of the compliance-based strategy in practice at different periods in time?
    i. Month 15 of the plan: The monitoring team visits a specific site at random times of the day and week. The team will count the total number of dogs and types of use over a pre-set monitoring period, while also recordingthe number of violations. This information will be compiled with the preceding months' monitoring data to develop a cumulative total number of dogs and violations. In 3 more months the monitoring team will have 12 months of data to evaluate, to determine if a secondary management response is warranted.
    ii. Month 18 of the plan: The monitoring team has continued to visit this specific site at random times of the day and week, following the same monitoring protocols as noted above If compliance falls below 75% based on the previous 12 months' monitoring data, the area management will change to the next most restrictive dog management guideline.
c. Rationale for 75%:
    i. The dog management plan/EIS and the resulting special regulation, along with existing regulations applicable to dog management, determine appropriate behavior for visitors with dogs within Golden Gate National Recreation Area. NPS does not condone any level of noncompliance, and the primary management response detailed above is sufficient to address noncompliance where it is not widespread. The secondary management response is meant to apply when it is clear both that park management has been unable to reduce noncompliance through conventional means, and when there is continued and widespread noncompliance occurring over a longer period of time. It provides visitors with dogs an additional incentive to comply with the dog regulations, and because it is specific to an individual area, it encourages a communal response to address noncompliance. It places a burden on NPS to take an initial, proactive approach to dog management by addressing individual violators and by increasing public awareness through community education and outreach, and not punish the majority for individual or isolated violations. At the same time, this secondary response recognizes that NPS has multiple competing priorities to address with its funding and does not have unlimited resources with which to ensure compliance with dog regulations. Compliance

**Comment [WWM6]:** We also said we would likely record numbers of people and numbers of dogs per person.

MBE: Yes, I don't think this is an exhaustive list of what will be counted.

less than 75% would not be sustainable for park operations, and could only be addressed through increased restrictions.

d. Rationale for 18 month period before a secondary management response could initially be applied:
    i. Need 3 months to educate the public about the plan, and 3 months to begin implementation of the monitoring plan.
    ii. Need one year to implement the full range of possible management actions addressing noncompliance as outlined in the primary management response, as well as to have 12 months of monitoring data.
    iii. One year rolling average is measured at the end of each month; action could be taken after any month as long as there are 11 consecutive preceding months of data.

**Draft Compliance Management Strategy**
**GGNRA dog management plan/EIS**
**9.23.10**

Background:

The compliance management strategy has been designed to ensure that compliance with the Code of Federal Regulations (CFR) applicable to dog management is high to ensure protection of park resources, visitors and staff. It will provide the framework for monitoring and recording observed CFR violations applicable to dog management, including the new 36 CFR Part 7 special regulation, and will guide use of park resources to address those violations. Noncompliance with federal regulations related to dog management will be met with a ~~series~~ range of management responses.

Timeline:

Monitoring will begin with plan implementation, or soon thereafter. A detailed monitoring plan will be developed to guide compliance monitoring, data management, and reporting. All sites in the dog management plan will be subject to monitoring~~ed~~. Beginning with initiation of the dog management plan, months 1-3 will be a public education period, and months 3-6 will test the monitoring strategy. A baseline of numbers and rates of visitors with dogs, type of use (on-leash or voice-control), and violations of regulations (not citations) will be established during months 6-18. After this baseline has been established, monitoring efforts may be prioritized and limited to specific areas based on noncompliance and use levels. Park management responses will focus on ~~A~~all areas with demonstrated noncompliance with the regulations ~~will be the focus of park management responses~~, as described in the primary management response section below. Monitoring ~~also~~ will inform park management and law enforcement when, where, and how to prioritize responses to noncompliance. If the rolling 12 month average for compliance falls below 75%, park management actions as described in the secondary management response will be implemented. The initial 12 month rolling average is based on data collected during months 6-18 after plan initiation.

**Comment [GOGA1]:** Downside of implication that park staff would observe but not report?

Monitoring will continue in all areas for at least 4 years, although the park may reduce the frequency of monitoring in low use or high compliance areas to focus on areas with high use or low compliance as needed. Regular monitoring of an area over a 12 month period is required before secondary management responses can be implemented, however, the frequency of monitoring at any one site may vary over time.

NPS will prepare annual reports documenting monitoring data collected and any consequent management actions. NPS will release a preliminary report providing baseline data after the first 6 months of monitoring (month 12 after plan initiation).~~.~~

Standard: Compliance with federal regulations applicable to dog management.

Indicators: Noncompliance with federal regulations applicable to dog management (see chart below).

| Vegetation Damage | Wildlife Disturbance | Disturbance to T&E Species | Violation of Areas Closed to Dogs (T/E and Sensitive Habitat) | Violation of Areas Closed to All (T/E and Sensitive Habitat) | Pet Excrement (grid or observations for noncompliance) | Hazardous Condition (aggressive behavior, pet rescues) | Degree of Compliance with special regulation (no dogs, on-leash, ROLA) | Gov't Property Damage | Violation of Areas Closed to Dogs (Safety) |
|---|---|---|---|---|---|---|---|---|---|
| 36 CFR 2.1 (a) (1) (ii) | 36 CFR 2.2(a)(2) | 36 CFR 2.2 (a) (2), 50 CFR Part 17 | NEW PART 7 SPECIAL REGULATION | 36 CFR 1.5 (f) | 36 CFR 2.15 (a) (5) and new Part 7? | 36 CFR 2.34 (a) | NEW 36 CFR PART 7 SPECIAL REGULATION | 36 CFR 2.31 (a) (3) | 36 CFR 1.5 (f), NEW PART 7 SPECIAL REGULA |

**Comment [GOGA2]:** Suggest move this column next to the other Violation of Closed Area column.

**Comment [MBE3]:** Assumes the plan has a Biological Opinion. If not, remove.

Triggers and management responses:

1. Primary management response: When noncompliance is observed at an area, NPS would weigh appropriate management ~~actions~~ options and would respond from a suite of potential ~~management~~ actions that include: focused enforcement of regulations, education (e.g., additional information and regulatory signs and exhibits, brochures and fliers, public meetings, meetings with user groups, etc.), establishment of buffer zones to protect sensitive habitat and species, time/use restrictions, and SUP restrictions.
    a. Areas with the highest rates of noncompliance, and/or sensitive resources, will receive first priority for primary management responses.
    b. Aggressive dogs or unsafe behavior (e.g. resulting in cliff rescues) are treated on an individual, case-by-case basis, and may result in banning a particular dog or dog walker from the park.
    c. Management responses related to threatened and endangered species will be governed by the Terms and Conditions described in the Biological Opinion pursuant to the Endangered Species Act, and are separate from the compliance based strategy.

**Comment [WWM4]:** How will this be done ?

MBE response: Not sure about the dogwalker part. Seems like people only get banned for egregious violations – would this qualify? If it does, don't know that we need to go into detail on how that would happen here. BARBARA?
SES to contact Barbara for input.

2. Secondary management response: When compliance falls below 75% in a site (measured as the percentage of total dogs violating the regulations) over a yearly rolling average (measured by the previous 12 months' data), the area flips to the next more restrictive level of dog management, for example: ROLA to on-leash, or on-leash to no dogs. The secondary management response would not be implemented until after the first 18 months, during which the monitoring plan will be tested and baseline data collection begun. If monitoring shows that a simple majority of violations (more than 51%) are occurring in one particular area within a site, such as a ROLA, only that area would flip, not the entire site. If

noncompliance is widespread across the site – not focused in one area only, the entire site would flip to the next most restrictive level.

FAQ's:

a. How do law enforcement citations or other violations factor into the plan? While violations will likely occur that are not documented by the monitoring team, including those resulting in law enforcement citations, th~~o~~ese ~~do~~ would not count towards the cumulative total for a particular site, because ~~these~~ the number of violations at any site must be measured ~~would not be~~ measured against the total number of dogs in ~~an~~ the area during monitoring. However, all violations reported to the park, including citations, may be used to inform the monitoring team where to focus its efforts.

b. How will the monitoring strategy be developed to produce an unbiased estimate of percent compliance? A probability based survey would be required to produce an unbiased estimate of the percent compliance with a specified margin of error. The survey would include a randomized selection process for selecting visitors with dogs to survey, and a method for conducting the survey. The survey plan would also address the various potential biases, such as selection bias, spatial coverage bias, and non-response bias. A stratified sampling procedure may also be employed to weight survey effort to more highly trafficked areas.

c. What are some examples of the compliance-based strategy in practice at different periods in time?

   i. Month 15 after implementation of the plan: The monitoring team visits a specific site at random times of the day and week. The team will count the total number of dogs and types of use over a pre-set monitoring period, while also recording the number of violations. This information will be compiled with the preceding months' monitoring data to develop a cumulative total number of dogs and violations. If monitoring over this time has shown significant levels of non-compliance at any specific site, the park will have initiated primary management actions to gain greater compliance. In 3 more months the monitoring team will have 12 months of data to evaluate, to determine if a secondary management response is warranted.

   ii. Month 18 of the plan: The monitoring team has continued to visit this specific site at random times of the day and week, following the same monitoring protocols as noted above If compliance falls below 75% based on the previous 12 months' monitoring data, in spite of the park's primary management actions, the site or area dog management will change to the next most restrictive dog management guideline.

d. Rationale for 75%:

   i. The dog management plan/EIS and the resulting special regulation, along with existing regulations applicable to dog management, determine appropriate

**Comment [WWM5]:** How do we deal with noncompliance at no dog areas? Esp. if can't tie it to adjacent ROLA or on-leash area? Ocean Beach?

MBE response: I believe this would be addressed primarily by law enforcement and education.

**Comment [GOGA6]:** Good way to present info. Suggest reformatting so answers stand out.

**Comment [MBE7]:** This section developed with the help of a statistician at EA. Please review.

**Comment [WWM8]:** We also said we would likely record numbers of people and numbers of dogs per person.

MBE response: Yes, I don't think this is an exhaustive list of what will be counted.

behavior for visitors with dogs within Golden Gate National Recreation Area. NPS does not condone any level of noncompliance, and the primary management response detailed above is sufficient to address noncompliance where it is not widespread. The secondary management response is meant to apply when it is clear both that park management has been unable to reduce noncompliance through conventional means, and when there is continued and widespread noncompliance occurring over a longer period of time. It provides visitors with dogs an additional incentive to comply with the dog regulations, and because it is specific to an individual area, it encourages a communal response to address noncompliance. It places a burden on NPS to take an initial, proactive approach to dog management by addressing individual violators and by increasing public awareness through community education and outreach, and not punish the majority for individual or isolated violations. At the same time, this secondary response recognizes that NPS has multiple competing priorities to address with its funding and does not have unlimited resources with which to ensure compliance with dog regulations. Compliance less than 75% would not be sustainable for park operations, and could only be addressed through increased restrictions.

e. Rationale for 18 month period before a secondary management response could initially be applied:
    i. Need 3 months after plan implementation to educate the public about the plan, and 3 months to begin implementation of the monitoring plan.
    ii. Need one year to implement the full range of possible management actions addressing noncompliance as outlined in the primary management response, as well as to have 12 months of monitoring data.
    iii. One year rolling average is measured at the end of each month; action could be taken after any month as long as there are 11 consecutive preceding months of data.

**Draft Compliance Management Strategy**
**GGNRA dog management plan/EIS**
**10.1.10**

Background:

The compliance management strategy has been designed to ensure that compliance with the Code of Federal Regulations (CFR) applicable to dog management is high to ensure protection of park resources, visitors and staff. It will provide the framework for monitoring and recording observed CFR violations applicable to dog management, including the new 36 CFR Part 7 special regulation, and will guide use of park resources to address those violations. Noncompliance with federal regulations related to dog management will be met with a range of management responses.

Timeline:

Monitoring will begin with plan implementation, or soon thereafter. A detailed monitoring plan will be developed to guide compliance monitoring, data management, and reporting. All sites in the dog management plan will be subject to monitoring. Beginning with initiation of the dog management plan, months 1-3 will be a public education period, and months 3-6 will test the monitoring strategy. A baseline of numbers and rates of visitors with dogs, type of use (on-leash or voice-control), and violations of regulations (even if not resulting in citations) will be established during months 6-18. After this baseline has been established, monitoring efforts may be prioritized and limited to specific areas based on noncompliance and use levels. Park management responses will focus on all areas with demonstrated noncompliance with the regulations, as described in the primary management response section below. Monitoring will inform park management and law enforcement when, where, and how to prioritize responses to noncompliance. If the rolling 12 month average for compliance falls below 75%, park management actions as described in the secondary management response will be implemented. The initial 12 month rolling average is based on data collected during months 6-18 after plan initiation.

Monitoring will continue in all areas for at least 4 years, although the park may reduce the frequency of monitoring in low use or high compliance areas to focus on areas with high use or low compliance as needed. Regular monitoring of an area over a 12 month period is required before secondary management responses can be implemented, however, the frequency of monitoring at any one site may vary over time.

NPS will prepare annual reports documenting monitoring data collected and any consequent management actions. NPS will release a preliminary report providing baseline data after the first 6 months of monitoring (month 12 after plan initiation).

Standard: Compliance with federal regulations applicable to dog management.

Indicators: Noncompliance with federal regulations applicable to dog management (see chart below).

| Vegetation Damage | Wildlife Disturbance | Disturbance to T&E Species | Violation of Areas Closed to Dogs (T/E and Sensitive Habitat) | Violation of Areas Closed to All (T/E and Sensitive Habitat) | Violation of Areas Closed to Dogs (Safety) | Hazardous Condition (aggressive behavior, pet rescues) | Degree of Compliance with special regulation (no dogs, on-leash, ROLA) | Gov't Property Damage | Pet Excrement (grid or observations for noncompliance) |
|---|---|---|---|---|---|---|---|---|---|
| 36 CFR 2.1 (a) (1) (ii) | 36 CFR 2.2(a)(2) | 36 CFR 2.2 (a) (2), 50 CFR Part 17 | NEW PART 7 SPECIAL REGULATION | 36 CFR 1.5 (f) | 36 CFR 1.5 (f), NEW PART 7 SPECIAL REGULATION | 36 CFR 2.34 (a) | NEW 36 CFR PART 7 SPECIAL REGULATION | 36 CFR 2.31 (a) (3) | 36 CFR 2.15 (a) (5) |

Triggers and management responses:

1. Primary management response: When noncompliance is observed at an area, NPS would weigh appropriate management options and would respond from a suite of potential actions that include: focused enforcement of regulations, education (e.g., additional information and regulatory signs and exhibits, brochures and fliers, public meetings, meetings with user groups, etc.), establishment of buffer zones to protect sensitive habitat and species, time/use restrictions, and SUP restrictions.
    a. Areas with the highest rates of noncompliance, and/or sensitive resources, will receive first priority for primary management responses.
    b. Aggressive dogs or unsafe behavior (e.g. resulting in cliff rescues) are treated on an individual, case-by-case basis, and may result in banning a particular dog or dog walker from the park.
    c. Management responses related to threatened and endangered species will be governed by the Terms and Conditions described in the Biological Opinion pursuant to the Endangered Species Act, and are separate from the compliance based strategy.

2. Secondary management response: When compliance falls below 75% in a site (measured as the percentage of total dogs violating the regulations) over a yearly rolling average (measured by the previous 12 months' data), the area flips to the next more restrictive level of dog management, for example: ROLA to on-leash, or on-leash to no dogs. The secondary management response would not be implemented until after the first 18 months, during which the monitoring plan will be tested and baseline data collection begun. If monitoring shows that a simple majority of violations (more than 51%) are occurring in one particular area within a site, such as a ROLA, only that area would flip, not the entire site. If

noncompliance is widespread across the site – not focused in one area only, the entire site would flip to the next most restrictive level.

**FAQ's:**

1. How do law enforcement citations or other violations factor into the plan? While violations will likely occur that are not documented by the monitoring team, including those resulting in law enforcement citations, those would not count towards the cumulative total for a particular site, because the number of violations at any site must be measured measured against the total number of dogs in the area during monitoring. However, all violations reported to the park, including citations, may be used to inform the monitoring team where to focus its efforts.
2. What are some examples of the compliance-based strategy in practice at different periods in time?
    a. Month 15 of the plan implementation: The monitoring team visits a specific site at random times of the day and week. The team will count the total number of dogs and types of use over a pre-set monitoring period, while also recording the number of violations. This information will be compiled with the preceding months' monitoring data to develop a cumulative total number of dogs and violations. Information gained through monitoring will direct use of park resources to initiate primary management responses as required. In 3 more months the monitoring team will have 12 months of data to evaluate, to determine if a secondary management response is warranted.
    b. Month 18 of the plan: The monitoring team has continued to visit this specific site at random times of the day and week, following the same monitoring protocols as noted above. If compliance falls below 75% based on the previous 12 months' monitoring data, in spite of the park's primary management actions, the site or area will change to the next most restrictive dog management guideline.
3. Rationale for 75%:
    a. The dog management plan/EIS and the resulting special regulation, along with existing regulations applicable to dog management, determine appropriate behavior for visitors with dogs within Golden Gate National Recreation Area. NPS does not condone any level of noncompliance, and the primary management response detailed above is sufficient to address noncompliance where it is not widespread. The secondary management response is meant to apply when it is clear both that park management has been unable to reduce noncompliance through conventional means, and when there is continued and widespread noncompliance occurring over a

longer period of time which could result in moderate, or even major adverse impacts. It provides visitors with dogs an additional incentive to comply with the dog regulations, and because it is specific to an individual area, it encourages a communal response to address noncompliance. It also places a burden on NPS to take an initial, proactive approach to dog management by addressing individual violators and by increasing public awareness through community education and outreach, and not punish the majority for individual or isolated violations. At the same time, this secondary response is intended to ensure that NPS does not allow activities that do not correspond with its primary conservation mandate. It recognizes that NPS has multiple competing priorities to address with its funding and does not have unlimited resources with which to ensure compliance with dog regulations. Compliance less than 75% would not be sustainable for park operations, and could only be addressed through increased restrictions.

4. Rationale for 18 month period before a secondary management response could initially be applied:
    a. Need 3 months after plan implementation to educate the public about the plan, and 3 months to begin implementation of the monitoring plan.
    b. Need one year to implement the full range of possible management actions addressing noncompliance as outlined in the primary management response, as well as to have 12 months of monitoring data.
    c. One year rolling average is measured at the end of each month; action could be taken after any month as long as there are 11 consecutive preceding months of data.

**Draft Compliance Management Strategy**
**GGNRA dog management plan/EIS**
**10.1.10**

Background:

The compliance management strategy has been designed to ensure that compliance with the Code of Federal Regulations (CFR) applicable to dog management is high to ensure protection of park resources, visitors and staff. It will provide the framework for monitoring and recording observed CFR violations applicable to dog management, including the new 36 CFR Part 7 special regulation, and will guide use of park resources to address those violations. Noncompliance with federal regulations related to dog management will be met with a range of management responses.

Timeline:

Monitoring will begin with plan implementation, or soon thereafter. A detailed monitoring plan will be developed to guide compliance monitoring, data management, and reporting. All sites in the dog management plan will be subject to monitoring. Beginning with initiation of the dog management plan, months 1-3 will be a public education period, and months 3-6 will involve testing the monitoring strategy. A baseline of numbers and rates of visitors with dogs, type of use (on-leash or voice-control), and violations of regulations (even if not resulting in citations) will be established during months 6-18. After this baseline has been established, monitoring efforts may be prioritized and limited to specific areas based on noncompliance and use levels. Park management responses will focus on all areas with demonstrated noncompliance with the regulations, as described in the primary management response section below. Monitoring will inform park management and law enforcement when, where, and how to prioritize responses to noncompliance. If the rolling 12 month average for compliance falls below 75%, park management actions as described in the secondary management response will be implemented. The initial 12 month rolling average is based on data collected during months 6-18 after plan initiation.

**Comment [WWM1]:** Or the park will test

**Comment [WWM2]:** We should also track numbers of people without dogs—though this would not factor into calculating compliance rates. Dogs per person is also another interesting parameter to capture.

Monitoring will continue in all areas for at least 4 years, although the park may reduce the frequency of monitoring in low use or high compliance areas to focus on areas with high use or low compliance as needed. Regular monitoring of an area over a 12 month period is required before secondary management responses can be implemented, however, the frequency of monitoring at any one site may vary over time.

NPS will prepare annual reports documenting monitoring data collected and any consequent management actions. NPS will release a preliminary report providing baseline data after the first 6 months of monitoring (month 12 after plan initiation).

Standard: Compliance with federal regulations applicable to dog management.

Indicators: Noncompliance with federal regulations applicable to dog management (see chart below).

| Vegetation Damage | Wildlife Disturbance | Disturbance to T&E Species | Violation of Areas Closed to Dogs (T/E and Sensitive Habitat) | Violation of Areas Closed to All (T/E and Sensitive Habitat) | Violation of Areas Closed to Dogs (Safety) | Hazardous Condition (aggressive behavior, pet rescues) | Degree of Compliance with special regulation (no dogs, on-leash, ROLA) | Gov't Property Damage | Pet Excrement (grid or observations for noncompliance) |
|---|---|---|---|---|---|---|---|---|---|
| 36 CFR 2.1 (a) (1) (ii) | 36 CFR 2.2(a)(2) | 36 CFR 2.2 (a) (2), 50 CFR Part 17 | NEW PART 7 SPECIAL REGULATION | 36 CFR 1.5 (f) | 36 CFR 1.5 (f), NEW PART 7 SPECIAL REGULATION | 36 CFR 2.34 (a) | NEW 36 CFR PART 7 SPECIAL REGULATION | 36 CFR 2.31 (a) (3) | 36 CFR 2.15 (a) (5) |

Triggers and management responses:

1. Primary management response: When noncompliance is observed at an area, NPS would weigh appropriate management options and would respond from a suite of potential actions that include: focused enforcement of regulations, education (e.g., additional information and regulatory signs and exhibits, brochures and fliers, public meetings, meetings with user groups, etc.), establishment of buffer zones to protect sensitive habitat and species, time/use restrictions, and SUP restrictions.
    a. Areas with the highest rates of noncompliance, and/or sensitive resources, will receive first priority for primary management responses.
    b. Aggressive dogs or unsafe behavior (e.g. resulting in cliff rescues) are treated on an individual, case-by-case basis, and may result in banning a particular dog or dog walker from the park.
    c. Management responses related to threatened and endangered species will be governed by the Terms and Conditions described in the Biological Opinion pursuant to the Endangered Species Act, and are separate from the compliance based strategy.

**Comment [WWM3]:** Michael, you are well aware that there may not be a BO, but we can cross that bridge when we come to it.

2. Secondary management response: When compliance falls below 75% in a site (measured as the percentage of total dogs violating the regulations) over a yearly rolling average (measured by the previous 12 months' data), the area flips to the next more restrictive level of dog management, for example: ROLA to on-leash, or on-leash to no dogs. The secondary management response would not be implemented until after the first 18 months, during which the monitoring plan will be tested and baseline data collection begun. If monitoring shows that a simple majority of violations (more than 51%) are occurring in one particular area within a site, such as a ROLA, only that area would flip, not the entire site. If

noncompliance is widespread across the site – not focused in one area only, the entire site would flip to the next most restrictive level.

**FAQ's:**

1. How do law enforcement citations or other violations factor into the plan? While violations will likely occur that are not documented by the monitoring team, including those resulting in law enforcement citations, those would not count towards the cumulative total for a particular site, because the number of violations at any site must be measured measured against the total number of dogs in the area during monitoring. However, all violations reported to the park, including citations, may be used to inform the monitoring team where to focus its efforts.
2. What are some examples of the compliance-based strategy in practice at different periods in time?
    a. Month 15 of the plan implementation: The monitoring team visits a specific site at random times of the day and week. The team will count the total number of dogs and types of use over a pre-set monitoring period, while also recording the number of violations. This information will be compiled with the preceding months' monitoring data to develop a cumulative total number of dogs and violations. Information gained through monitoring will direct use of park resources to initiate primary management responses as required. In 3 more months the monitoring team will have 12 months of data to evaluate, to determine if a secondary management response is warranted.
    b. Month 18 of the plan: The monitoring team has continued to visit this specific site at random times of the day and week, following the same monitoring protocols as noted above. If compliance falls below 75% based on the previous 12 months' monitoring data, in spite of the park's primary management actions, the site or area will change to the next most restrictive dog management guideline.
3. Rationale for 75%:
    a. The dog management plan/EIS and the resulting special regulation, along with existing regulations applicable to dog management, determine appropriate behavior for visitors with dogs within Golden Gate National Recreation Area. NPS does not condone any level of noncompliance, and the primary management response detailed above is sufficient to address noncompliance where it is not widespread. The secondary management response is meant to apply when it is clear both that park management has been unable to reduce noncompliance through conventional means, and when there is continued and widespread noncompliance occurring over a

longer period of time which could result in moderate, or even major adverse impacts. It provides visitors with dogs an additional incentive to comply with the dog regulations, and because it is specific to an individual area, it encourages a communal response to address noncompliance. It also places a burden on NPS to take an initial, proactive approach to dog management by addressing individual violators and by increasing public awareness through community education and outreach, and not punish the majority for individual or isolated violations. At the same time, this secondary response is intended to ensure that NPS does not allow activities that do not correspond with its primary conservation mandate. It recognizes that NPS has multiple competing priorities to address with its funding and does not have unlimited resources with which to ensure compliance with dog regulations. Compliance less than 75% would not be sustainable for park operations, and could only be addressed through increased restrictions.

4. Rationale for 18 month period before a secondary management response could initially be applied:
    a. Need 3 months after plan implementation to educate the public about the plan, and 3 months to begin implementation of the monitoring plan.
    b. Need one year to implement the full range of possible management actions addressing noncompliance as outlined in the primary management response, as well as to have 12 months of monitoring data.
    c. One year rolling average is measured at the end of each month; action could be taken after any month as long as there are 11 consecutive preceding months of data.

**Draft Compliance Management Strategy**
**GGNRA dog management plan/EIS**
**10.3.10**

Background:

The compliance management strategy has been designed to ensure that compliance with the Code of Federal Regulations (CFR) applicable to dog management is high to ensure protection of park resources, visitors and staff. It will provide the framework for monitoring and recording observed noncompliance with the CFRs applicable to dog management, including the new 36 CFR Part 7 special regulation, and will guide use of park resources to address those violations. Noncompliance with federal regulations related to dog management will be met with a range of management responses.

Timeline:

Monitoring will begin with plan implementation, or soon thereafter. A detailed monitoring plan will be developed to guide compliance monitoring, data management, and reporting. All sites in the dog management plan will be subject to monitoring. Beginning with initiation of the dog management plan, months 1-3 will be a public education period, and months 3-6 will involve testing the monitoring strategy. A baseline of numbers and rates of visitors with and without dogs, numbers of dogs per visitor, type of use (on-leash or voice-control), and noncompliance with regulations (includes violations not resulting in citations) will be established during months 6-18. After this baseline has been established, monitoring efforts may be prioritized and limited to specific areas based on noncompliance and use levels. Park management responses will focus on all areas with demonstrated noncompliance with the regulations, as described in the primary management response section below. Monitoring will inform park management and law enforcement when, where, and how to prioritize responses to noncompliance. If the rolling 12 month average for compliance falls below 75%, park management actions as described in the secondary management response will be implemented. The initial 12 month rolling average is based on data collected during months 6-18 after plan initiation.

Monitoring will continue in all areas for at least 4 years, although the park may reduce the frequency of monitoring in low use or high compliance areas to focus on areas with high use or low compliance as needed. Regular monitoring of an area over a 12 month period is required before secondary management responses (see below) can be implemented, however, the frequency of monitoring at any one site may vary over time.

NPS will prepare annual reports documenting monitoring data collected and any consequent management actions. NPS will release a preliminary report providing baseline data after the first 6 months of monitoring (month 12 after plan initiation).

Standard: Compliance with federal regulations applicable to dog management.

Indicators: Noncompliance with federal regulations applicable to dog management (see chart below).

| Vegetation Damage | Wildlife Disturbance | Disturbance to T&E Species | Violation of Areas Closed to Dogs (T/E and Sensitive Habitat) | Violation of Areas Closed to All (T/E and Sensitive Habitat) | Violation of Areas Closed to Dogs (Safety) | Hazardous Condition (aggressive behavior, pet rescues) | Degree of Compliance with special regulation (no dogs, on-leash, ROLA) | Gov't Property Damage | Pet Excrement |
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| 36 CFR 2.1 (a) (1) (ii) | 36 CFR 2.2(a)(2) | 36 CFR 2.2 (a) (2), 50 CFR Part 17 | NEW PART 7 SPECIAL REGULATION | 36 CFR 1.5 (f) | 36 CFR 1.5 (f), NEW PART 7 SPECIAL REGULATION | 36 CFR 2.34 (a) | NEW 36 CFR PART 7 SPECIAL REGULATION | 36 CFR 2.31 (a) (3) | 36 CFR 2.15 (a) (5) |

Triggers and management responses:

1. Primary management response: When noncompliance is observed at an area, NPS would weigh appropriate management options and would respond from a suite of potential actions that include: focused enforcement of regulations, education (e.g., additional information and regulatory signs and exhibits, brochures and fliers, public meetings, meetings with user groups, etc.), establishment of buffer zones to protect sensitive habitat and species, time/use restrictions, and SUP restrictions.
    a. Areas with the highest rates of noncompliance, and/or sensitive resources, will receive first priority for primary management responses.
    b. Aggressive dogs or unsafe behavior (e.g. resulting in cliff rescues) are treated on an individual, case-by-case basis, and may result in banning a particular dog or dog walker from the park.
    c. If Section 7 consultation pursuant to the Endangered Species Act requires preparation of a Biological Opinion, management responses related to threatened and endangered species will be governed by the Terms and Conditions described in the Biological Opinion, and would be separate from the compliance based strategy. Emergency closures for listed species protection could occur outside of the compliance-based strategy.

2. Secondary management response: When compliance falls below 75% in a site (measured as the percentage of total dogs not in compliance with the regulations) over a yearly rolling average (measured by the previous 12 months' data), the area's management changes to the next more restrictive level of dog management, for example: ROLA to on-leash, or on-leash to no dogs. The secondary management response would not be implemented until after the

first 18 months, during which the monitoring plan will be tested and baseline data collection begun. If monitoring shows that a simple majority of violations (more than 51%) are occurring in one particular area within a site, such as a ROLA, only that area would change, not the entire site. If noncompliance is widespread across the site – not focused in one area only, the entire site would change to the next most restrictive level.

**FAQ's:**

1. How do law enforcement citations or other violations factor into the plan? While violations and/or noncompliance will likely occur that are not documented by the monitoring team, including those resulting in law enforcement citations, those would not count towards the cumulative total for a particular site, because the number of incidents of noncompliance at any site must be measured against the total number of dogs in the area during monitoring. However, all violations reported to the park, including citations, may be used to inform the monitoring team where to focus its efforts.
2. What are some examples of the compliance-based strategy in practice at different periods in time?
    a. Month 15 of the plan implementation: The monitoring team visits a specific site at random times of the day and week. The team will count the total number of dogs and types of use over a pre-set monitoring period, while also recording the number of violations. This information will be compiled with the preceding months' monitoring data to develop a cumulative total number of dogs and violations. Information gained through monitoring will direct use of park resources to initiate primary management responses as required. In 3 more months the monitoring team will have 12 months of data to evaluate, to determine if a secondary management response is warranted.
    b. Month 18 of the plan: The monitoring team has continued to visit this specific site at random times of the day and week, following the same monitoring protocols as noted above. If compliance falls below 75% based on the previous 12 months' monitoring data, in spite of the park's primary management actions, the site or area will change to the next most restrictive dog management guideline.
3. After the secondary management strategy has been initiated, if compliance later rises above 75%, can an area be changed back to the next least restrictive management regime? No. The secondary management response is a permanent change.
4. Rationale for 75%:

a. The dog management plan/EIS and the resulting special regulation, along with existing regulations applicable to dog management, determine appropriate behavior for visitors with dogs within Golden Gate National Recreation Area. NPS does not condone any level of noncompliance, and the primary management response detailed above is sufficient to address noncompliance where it is not widespread. The secondary management response is meant to apply when it is clear both that park management has been unable to reduce noncompliance through conventional means, and when there is continued and widespread noncompliance occurring over a longer period of time which could result in moderate, or even major adverse impacts. It provides visitors with dogs an additional incentive to comply with the dog regulations, and because it is specific to an individual area, it encourages a communal response to address noncompliance. It also places a burden on NPS to take an initial, proactive approach to dog management by addressing individual violators and by increasing public awareness through community education and outreach, and not punish the majority for individual or isolated violations. At the same time, this secondary response is intended to ensure that NPS does not allow activities that do not correspond with its primary conservation mandate. It recognizes that NPS has multiple competing priorities to address with its funding and does not have unlimited resources with which to ensure compliance with dog regulations. Compliance less than 75% would not be acceptable for park operations, and could only be addressed through increased restrictions.

5. Rationale for 18 month period before a secondary management response could initially be applied:
    a. Need 3 months after plan implementation to educate the public about the plan, and 3 months to test, possibly modify, and implement the monitoring plan.
    b. Need one year to implement the full range of possible management actions addressing noncompliance as outlined in the primary management response, as well as to have 12 months of monitoring data.
    c. One year rolling average is measured at the end of each month; action could be taken after any month as long as there are 11 consecutive preceding months of data.

**Draft Compliance Management Strategy**
**GGNRA dog management plan/EIS**
**10.1.10**

Background:

The compliance management strategy has been designed to ensure that compliance with the Code of Federal Regulations (CFR) applicable to dog management is high to ensure protection of park resources, visitors and staff. It will provide the framework for monitoring and recording observed CFR violations applicable to dog management, including the new 36 CFR Part 7 special regulation, and will guide use of park resources to address those violations. Noncompliance with federal regulations related to dog management will be met with a range of management responses.

Timeline:

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Monitoring will continue in all areas for at least 4 years, although the park may reduce the frequency of monitoring in low use or high compliance areas to focus on areas with high use or low compliance as needed. Regular monitoring of an area over a 12 month period is required before secondary management responses can be implemented, however, the frequency of monitoring at any one site may vary over time.

NPS will prepare annual reports documenting monitoring data collected and any consequent management actions. NPS will release a preliminary report providing baseline data after the first 6 months of monitoring (month 12 after plan initiation).

Standard: Compliance with federal regulations applicable to dog management.

**Comment [dah1]:** Depending on where this section is in the document, there may need to be more context than is provided in this paragraph.

**Comment [dah2]:** Suggest using the term 'noncompliance with CFR regulations' rather than CFR violations whenever referring to the monitoring. In my mind a 'violation' really refers to when someone has been issued a ticket. This distinction probably needs to be spelled out in the document as well.

**Comment [WWM3]:** Or the park will test

**Comment [WWM4]:** We should also track numbers of people without dogs—though this would not factor into calculating compliance rates. Dogs per person is also another interesting parameter to capture.

**Comment [dah5]:** This is confusing since primary and secondary management responses haven't been described until further down in the document.

Indicators: Noncompliance with federal regulations applicable to dog management (see chart below).

| Vegetation Damage | Wildlife Disturbance | Disturbance to T&E Species | Violation of Areas Closed to Dogs (T/E and Sensitive Habitat) | Violation of Areas Closed to All (T/E and Sensitive Habitat) | Violation of Areas Closed to Dogs (Safety) | Hazardous Condition (aggressive behavior, pet rescues) | Degree of Compliance with special regulation (no dogs, on-leash, ROLA) | Gov't Property Damage | Pet Excrement (grid or observations for noncompliance) |
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**Comment [dah6]:** explain

Triggers and management responses:

1. Primary management response: When noncompliance is observed at an area, NPS would weigh appropriate management options and would respond from a suite of potential actions that include: focused enforcement of regulations, education (e.g., additional information and regulatory signs and exhibits, brochures and fliers, public meetings, meetings with user groups, etc.), establishment of buffer zones to protect sensitive habitat and species, time/use restrictions, and SUP restrictions.
    a. Areas with the highest rates of noncompliance, and/or sensitive resources, will receive first priority for primary management responses.
    b. Aggressive dogs or unsafe behavior (e.g. resulting in cliff rescues) are treated on an individual, case-by-case basis, and may result in banning a particular dog or dog walker from the park.
    c. Management responses related to threatened and endangered species will be governed by the Terms and Conditions described in the Biological Opinion pursuant to the Endangered Species Act, and are separate from the compliance based strategy.

**Comment [WWM7]:** Michael, you are well aware that there may not be a BO, but we can cross that bridge when we come to it.

**Comment [dah8]:** If we don't have a BO I think we need the option of implementing secondary management responses to protect T&E species much sooner than 18 months from rollout of the rule. The public would need to know this is a possibility.

2. Secondary management response: When compliance falls below 75% in a site (measured as the percentage of total dogs ~~violating~~ not in compliance with the regulations) over a yearly rolling average (measured by the previous 12 months' data), the area flips to the next more restrictive level of dog management, for example: ROLA to on-leash, or on-leash to no dogs. The secondary management response would not be implemented until after the first 18 months, during which the monitoring plan will be tested and baseline data collection begun. If monitoring shows that a simple majority of violations (more than 51%) are occurring in one particular area within a site, such as a ROLA, only that area would flip, not the entire

**Comment [dah9]:** I can't think of a better word than 'flip' but I'm not crazy about it either. It sounds flippant. You used 'change' in the FAQs.

site. If noncompliance is widespread across the site – not focused in one area only, the entire site would flip to the next most restrictive level.

**Comment [dah10]:** I think we'll find this needs to be more on a case by case basis, and on how we actually define a site. For example, Fort Funston is really 2 pretty separate sites (the bluff top and the beach). Marin Headlands Trails may not all be linked together in how a site is flipped.

**FAQ's:**

1. How do law enforcement citations or other violations factor into the plan? While violations and/or noncompliance will likely occur that are not documented by the monitoring team, including those resulting in law enforcement citations, those would not count towards the cumulative total for a particular site, because the number of ~~violations~~ incidents of noncompliance at any site must be measured ~~measured~~ against the total number of dogs in the area during monitoring. However, all violations reported to the park, including citations, may be used to inform the monitoring team where to focus its efforts.
2. What are some examples of the compliance-based strategy in practice at different periods in time?
    a. Month 15 of the plan implementation: The monitoring team visits a specific site at random times of the day and week. The team will count the total number of dogs and types of use over a pre-set monitoring period, while also recording the number of violations. This information will be compiled with the preceding months' monitoring data to develop a cumulative total number of dogs and violations. Information gained through monitoring will direct use of park resources to initiate primary management responses as required. In 3 more months the monitoring team will have 12 months of data to evaluate, to determine if a secondary management response is warranted.
    b. Month 18 of the plan: The monitoring team has continued to visit this specific site at random times of the day and week, following the same monitoring protocols as noted above. If compliance falls below 75% based on the previous 12 months' monitoring data, in spite of the park's primary management actions, the site or area will change to the next most restrictive dog management guideline.
3. Rationale for 75%:
    a. The dog management plan/EIS and the resulting special regulation, along with existing regulations applicable to dog management, determine appropriate behavior for visitors with dogs within Golden Gate National Recreation Area. NPS does not condone any level of noncompliance, and the primary management response detailed above is sufficient to address noncompliance where it is not widespread. The secondary management response is meant to apply when it is clear both that park management has been unable to reduce noncompliance through conventional means, and

when there is continued and widespread noncompliance occurring over a longer period of time which could result in moderate, or even major adverse impacts. It provides visitors with dogs an additional incentive to comply with the dog regulations, and because it is specific to an individual area, it encourages a communal response to address noncompliance. It also places a burden on NPS to take an initial, proactive approach to dog management by addressing individual violators and by increasing public awareness through community education and outreach, and not punish the majority for individual or isolated violations. At the same time, this secondary response is intended to ensure that NPS does not allow activities that do not correspond with its primary conservation mandate. It recognizes that NPS has multiple competing priorities to address with its funding and does not have unlimited resources with which to ensure compliance with dog regulations. Compliance less than 75% would not be sustainable for park operations, and could only be addressed through increased restrictions.

4. Rationale for 18 month period before a secondary management response could initially be applied:
    a. Need 3 months after plan implementation to educate the public about the plan, and 3 months to begin implementation of the monitoring plan.
    b. Need one year to implement the full range of possible management actions addressing noncompliance as outlined in the primary management response, as well as to have 12 months of monitoring data.
    c. One year rolling average is measured at the end of each month; action could be taken after any month as long as there are 11 consecutive preceding months of data.

**Comment [dah11]:** Testing and modifications to address issues identified in the field.

Smith, Shirwin <shirwin_smith@nps.gov>

# How are the new signs working for you? Grr, bark, woof...

3 messages

**Shirwin_Smith@nps.gov** <Shirwin_Smith@nps.gov> Tue, Jul 31, 2012 at 4:55 PM
To: Michael_Coffey@nps.gov

Shirwin Smith
Management Assistant
Golden Gate National Recreation Area
Ft. Mason, Building 201
San Francisco, CA 94123
415-561-4947 (o)
415-716-9999 (c)

---- Forwarded by Shirwin Smith/GOGA/NPS on 07/31/2012 04:54 PM ----

| | |
|---|---|
| **James Sword/GOGA/NPS** | ToMichael Coffey/GOGA/NPS@NPS, Shirwin Smith/GOGA/NPS@NPS |
| 07/13/2012 08:23 AM | cc |
| | Subjectfort fun signs |

Shirwin and Mike- signs are printed come over when convenient.

Dogs- bark, bark, grrrr, good dog.

Thank you.

James Sword

Golden Gate National Recreation Area
Office of Special Park Uses
Building 204 Fort Mason
San Francisco, CA 94123
415-561-4373 Office
415-845-5720 Cell
415-561-4305 FAX

Due to America's Cup related activities, we will be extremely limited in the ability to permit special events from July-September 2012 & 2013.

Look up permit applications and information on our website: http://www.nps.gov/goga/planyourvisit/permit-forms.htm

The Doyle Drive project will impact events throughout the park for coming years, please visit http://doyledrive.org/ for more information.

**Michael_Coffey@nps.gov** <Michael_Coffey@nps.gov> Tue, Jul 31, 2012 at 4:59 PM
To: Shirwin_Smith@nps.gov

Just got the Maintenance Facility signs up today- I'll update you on feedback. The other sign will be used the next time we do a project or repair- soon I'm sure.

BTW, going down with Trails next week to look at the advertised on-leash dog walking paths near Coral Reef entrance. We're going to look to see if they are viable and maintainable in the winter wet and short term. More to come.

Thanks,
MC
Michael Coffey
NPS- Golden Gate National Rec. Area
Supervisor- Ocean District Maintenance
415.239.2324 office
510.205.5568 cell
Michael_Coffey@NPS.gov

## -----Shirwin Smith/GOGA/NPS wrote: -----

To: Michael Coffey/GOGA/NPS@NPS
From: Shirwin Smith/GOGA/NPS
Date: 07/31/2012 04:55PM
Subject: How are the new signs working for you? Grr, bark, woof...

Shirwin Smith
Management Assistant
Golden Gate National Recreation Area
Ft. Mason, Building 201
San Francisco, CA 94123
415-561-4947 (o)
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---- Forwarded by Shirwin Smith/GOGA/NPS on 07/31/2012 04:54 PM ----

| | | |
|---|---|---|
| **James Sword/GOGA/NPS**<br><br>07/13/2012 08:23 AM | [IMAGE] To | [IMAGE] Michael Coffey/GOGA/NPS@NPS, Shirwin Smith/GOGA/NPS@NPS |
| | [IMAGE] cc | [IMAGE] |
| | [IMAGE] Subject | [IMAGE] fort fun signs |
| | [IMAGE] | [IMAGE] |

Shirwin and Mike- signs are printed come over when convenient.

Dogs- bark, bark, grrrr, good dog.

Thank you.

James Sword

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---

**Michael_Coffey@nps.gov** <Michael_Coffey@nps.gov> Wed, Aug 1, 2012 at 9:29 AM
To: Shirwin_Smith@nps.gov

I'll take the bags as a comment from one dog walker. See attached pic.

To be honest, the bags did disappear a couple hours later. The folks do seem to be cleaning up after one another. That's a good thing.

[Quoted text hidden]
*(See attached file: FOFU Dog Maint Sign 2012.JPG)*

**FOFU Dog Maint Sign 2012.JPG**
1262K

# DELIBERATIVE DRAFT – INFORMATION ON COMMERCIAL DOGWALKING BY LOCAL AGENCIES 021009

| Jurisdiction | City/County of San Francisco | San Mateo | Unincorporated Marin County | Marin County Parks | Marin County Open Space | Marin Water District | Point Reyes National Seashore | State of California | Midpeninsula Regional Open Space | East Bay Regional Parks |
|---|---|---|---|---|---|---|---|---|---|---|
| **Number of dogs allowed per person?** | 3 dogs per owner in off-leash areas (is this the same for on-leash?). | N/A | * 3 dogs under the age of 4 months old, unless there is a hobbyist or ranch dog permit. | N/A | 3 dogs per person.*This number is based on the county code regulation of pets per family, per household. | *No limit, as long as all dogs are on a leash. | *Not in regulations yet, but have been discussing limiting to 3 dogs per person. | *No limit. | 3 dogs per person. | 3 dogs per person. |
| **Dogs allowed off-leash (y/n)** | Yes | N/A | *Yes | Yes – although technically against the regulations. | Yes | No | No | No | Yes | Yes – *In most undeveloped areas except where restricted for wildlife and resource protection areas. |
| **Regulations for commercial dog walkers (y/n)** | Yes | N/A | *Have ordnance that requires permitting of commercial establishments. At this time, the county board of supervisors is that dog walkers do not fall under this definition, this could change. All other animal businesses is regulated by permit. | *No | *Yes | *No – same rules apply as to the public. | *Yes – Commercial dog walking is banned because it is a commercial use | *No special regulations. | *No special regulations. | Yes |
| **Fees for commercial dog walkers?** | Yes – sliding scale?? | N/A | N/A | N/A | *Yes – must get an annual permit for $150 a year for up to 3 walkers and $200 beyond 3 walkers. | N/A | N/A | N/A | N/A | Yes – commercial permits $200/yr, permit for individual to walk more than 3 dogs $25/year, household permit $40/year. *Walker must have permit in their procession and must be able to show this permit to park staff if asked. |
| **Limit on the number of dogs per commercial walker?** | Recommend no more than 6 dogs. | N/A | N/A | N/A | *Up to 6 dogs, but 3 have to be on leash at all times. | *None. | N/A | N/A | N/A | No more than 6 dogs. |
| **Limit on the number off off-leash dogs per commercial** | No more than 6 dogs off-leash at a time. | N/A | N/A | N/A | *No more than 3 dogs off-leash at a time. | N/A | N/A | N/A | | Commercial walkers follow the same leash laws as individuals. |

# DELIBERATIVE DRAFT – INFORMATION ON COMMERCIAL DOGWALKING BY LOCAL AGENCIES 021009

| Jurisdiction | City/County of San Francisco | San Mateo | Unincorporated Marin County | Marin County Parks | Marin County Open Space | Marin Water District | Point Reyes National Seashore | State of California | Midpeninsula Regional Open Space | East Bay Regional Parks |
|---|---|---|---|---|---|---|---|---|---|---|
| **walker** | | | | | | | | | | |
| **Leash length maximum – commercial dog walker** | 8 feet | N/A | N/A | N/A | *6 feet | *6 feet | N/A | N/A | | 6 feet |
| **Notes on commercial dog walking regulations** | Permit for commercial dog walkers is required as well as an Animal Care and Control Agreement. Walker must have a leash for each dog.<br><br>Commercial walker use of DPA's limited to 9:00 am to 4:00 pm | N/A | N/A | *Although no regulations, commercial dog walkers use McInnis Park. It is an established use there. | *Each walker is registered and their permit is a conditional use permit. Commercial walkers must attend a trail etiquette program that is conducted by the Marin County Humane Society. Walkers carry a badge with them that is 5 inches by 7 inches and must be visible when they are walking in the preserves. The badge has a large number representing their company and their name. Walkers can only use the preserves on weekday mornings and evenings and their permit restricts them to particular places so there are not too many walkers in one place. There are currently about 14 of these permits active.<br><br>Generally good compliance, have rescinded permits for non-compliance. | N/A | N/A | N/A | | *It was a two year process with a staff and citizen committee to develop commercial dog walker regulations. |

**References:**

| Jurisdiction | City/County of San Francisco | San Mateo | Unincorporated Marin County | Marin County Parks | Marin County Open Space | Marin Water District | Point Reyes National Seashore | State of California | Midpeninsula Regional Open Space | East Bay Regional Parks | San Francisco Watershed |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Responsible Department/ Agency** | Recreation and Parks Department | San Mateo Parks and Recreation | *Enforced by the Marin County Humane Society, Developed by the Board of Supervisors | Parks and Open Space District | Parks and Open Space District | Marin Municipal Water District | National Park Service | California State Parks | Midpeninsula Regional Open Space District | East Bay Regional Park District | San Francisco PUC |
| **Area of Land Managed** | 3,300 acres | 17 parks | *Unknown | *700 acres, about 400 acres are developed | 15,000 acres in 34 preserves | 21,000 acres | 71,000 acres | Six parks in the immediate area, includes over 7,600 acres | 50,000 acres with more than 25 open space preserves | 95,00 acres, more than 1,000 miles of trails | 63,000 acres of watershed lands and 210-miles of rights-of-way |
| **Definition of Voice Control** | Dog must respond immediately to commands. | N/A | Dog control by responsible person: (a) Dogs shall at all times be kept under the immediate control and direction of a competent, responsible person who is capable of controlling such an animal. Any dog which is not subject to such control and direction may be seized and impounded.<br><br>(b) Every owner/guardian or possessor of a dog shall at all times prevent such dog from biting or physically harassing any person engaged in a lawful act and from interfering with the lawful use of public or private property.<br><br>(c) Every owner/guardian or | Under the direct and immediate control of a responsible person. | Dogs are expected to return to handler immediately when called (two calls with a return limit of 15 seconds). Dogs are required to remain within 30 feet of the handler when off leash on fire roads. | N/A | N/A | N/A | Dogs must be under voice control. *checking into the definition | "Kept under control at all times" – Dogs are considered under control when they are within direct eyesight of the owner/handler and when they have the ability to quickly return to leash when called. Dogs that annoy, harass, or attack people, wildlife, livestock or other dogs, leashed or unleashed, or which enter leash-required or dog-prohibited areas, are presumed to be not under control. (Section 801.3 of ordinance) | N/A |

| Jurisdiction | City/County of San Francisco | San Mateo | Unincorporated Marin County | Marin County Parks | Marin County Open Space | Marin Water District | Point Reyes National Seashore | State of California | Midpeninsula Regional Open Space | East Bay Regional Parks | San Francisco Watershed |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | possessor of a dog shall at all times prevent such dog from causing injury to another domestic animal while such domestic animal is lawfully upon public or private property and which results in veterinarian treatment or death.<br><br>(d) Every owner/guardian or possessor of a dog shall desist from commanding or provoking such dog to attack, sic or threaten a person when such person is peaceably and lawfully upon public or private property. | | | | | | | | |
| **Dogs allowed in parks?** | Yes | No – No dogs allowed in county parks or on county trails. | *Parks would fall under Marin Parks and Open Space. No areas where they are not allowed. Unincorporated areas does not include any formal park areas that are outside the jurisdiction of the Parks department. Unincorporated lands include those not in the city limits, such streets, neighborhoods, easements, etc. | Yes, but with some exceptions | Yes – *Open Space district, lands are strictly preserved for resource protection with some recreation uses. Dogs are restricted to trials or fire roads, have about 190 miles of these areas. Are not allowed to roam free in any of the preserve areas. | Yes – Dogs only allowed on leash. | Yes – *Dogs are allowed in developed areas everywhere throughout the park on leash, with the exception of the lighthouse and Ken Patrick Visitors Center (can be in parking lot but not on the beach).<br><br>Dogs are also | Yes – *Limited to use areas, like picnic areas and campgrounds. Not allowed on trails. There is a beach-like area at the China Camp SP campground where on-leash dogs are allowed. | Yes – Only within 9 of the 25 preserves. | Yes – In undeveloped areas. Dogs required to be on leash in developed areas (i.e. campgrounds). *See ordnance 38 for the rules and regulations. Currently going though annual revisions. | No – Domestic pets are only allowed if needed for a guide, search and rescue, or police dogs. |

| Jurisdiction | City/County of San Francisco | San Mateo | Unincorporated Marin County | Marin County Parks | Marin County Open Space | Marin Water District | Point Reyes National Seashore | State of California | Midpeninsula Regional Open Space | East Bay Regional Parks | San Francisco Watershed |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | allowed Kehoe Beach trail , North and South Beach, and Limantour Beach south of the parking area, Palomarin Beach, Bolinas Ridge trail, McCurdy trail, Randall trail. | | | | |
| **Number of dogs allowed per person?** | 3 dogs per owner in off-leash areas (is this the same for on-leash?). | N/A | * 3 dogs under the age of 4 months old, unless there is a hobbyist or ranch dog permit. | No limit | 3 dogs per person.*This number is based on the county code regulation of pets per family, per household. | *No limit, as long as all dogs are on a leash. | *Not in regulations yet, but have been discussing limiting to 3 dogs per person. | *No limit. | 3 dogs per person. | 3 dogs per person. | N/A |
| **Any areas within the parks where dogs are not permitted?** | Dogs are not permitted on athletic fields, tennis/ basketball/volleyball courts, children's play areas, sensitive habitat areas. | N/A | *No areas where they are not permitted. | No dogs at McNear's Beach, Paradise Beach, and Stafford Lake | Dogs are not permitted in any areas except trials or fire roads. | *No. There may be closures on a temporary basis for a project, such as constructing a trail, or for species protection (i.e. foothill yellow legged frog habitat). | Dogs are not allowed in all other areas of the national seashore. This includes the following beaches: McClure's, Drake's, Sculptured, Kelham, Santa Maria, Wildcat, Abbott's Lagoon<br><br>*Dogs are not allowed in any other back country area or tail is closed to dogs. | Dogs are not allowed on most beaches with some exceptions noted. This includes Tomales Bay (no dogs on trails or beaches) and Angel Island (no dogs anywhere). | Dogs are not allowed within 16 of the 25 preserves | Dogs are prohibited on swimming beaches, near wetlands, or near designated nature study sites. Specific areas where dogs are not allowed: Ardenwood Historic Farm; Huckleberry Botanic Regional Preserve; Round Valley Regional Preserve; Redwood Stream Protection Area as fenced or posted ; Ohlone Wilderness ; Ohlone Wilderness Trail; Overnight at Sunol Backpack Camps; Brooks Island Regional Preserve; Las Trampas Stables; Redwood Arena; Regional Parks Botanic Garden (in | N/A |

| Jurisdiction | City/County of San Francisco | San Mateo | Unincorporated Marin County | Marin County Parks | Marin County Open Space | Marin Water District | Point Reyes National Seashore | State of California | Midpeninsula Regional Open Space | East Bay Regional Parks | San Francisco Watershed |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | Tilden Regional Park); Tilden Nature Area (in Tilden Regional Park); swimming pools; resource or wildlife protection areas; golf courses (Tilden Regional Park and Anthony Chabot Regional Park); any area so posted; and any other area specifically designated by the Board | |
| **Leash length maximum – private owner** | 6 feet | N/A | *No leash length maximum, no areas that require a leash. | 6 feet | 6 feet and dog must be "under the direct and immediately control of a responsible person." | *6 feet. This is the law that is on the books however, with retractable leashes, this has become flexible. Eventually regulations will have to change to reflect this. | 6 feet | 6 feet | 6 feet for traditional leashes, 25 feet for retractable. Retractable leash cannot be longer than 6 feet within 100 feet of parking area, trail head, picnic area, horse stable, campground, public roadway, restroom, visitor center, ranger station, or other structure or within 50 feet of other persons or District Water areas. | 6 feet | N/A |
| **Dogs allowed off-leash (y/n)** | Yes | N/A | *Yes | Yes – in select parks. | Yes, except for at the following units: Bald Hill, Bolinas Lagoon, Bothin Marsh, Cascade Canyon, Deer Island, Maurice Thorner, Ring Mountain, Roy's Redwoods, Rush Creek, San Pedro | No | No | No | Yes | Yes – *In most undeveloped areas except where restricted for wildlife and resource protection areas. | N/A |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Ridge, Santa Margarita Island, Santa Venetia Marsh | | | | | | |
| **Special Conditions for off-leash** | Off-leash dogs are only allowed within Dog Play Areas (DPAs) – 22 in the city. | N/A | *No special conditions | Dogs are only allowed off-leash at portions of McInnis Park and Upton Beach at Stinson Beach | Dogs are only allowed off-leash on fire roads – only 3 off-leash dogs per individual are allowed. | N/A | N/A | N/A | Off-leash dogs allowed only in the 17.5 Pulgas Ridge Reserve. | Dogs may run at large within District parklands provided the owner, keeper, or person exercising the dog(s) has a leash capable of fixed six-foot length in their possession and keeps their animal(s) under control at all times. | N/A |
| **Notes on any off-leash areas** | DPAs are at least 10,000 square feet and have either a fence or natural barrier (i.e. topography). Processes in place for adding, removing, or placing a complaint about a DPA | N/A | None. | None. | None. | N/A | N/A | N/A | While in an off-leash area, visitors must have a leash in their possession and their animal must be kept under voice control. Dogs must not be allowed to interfere with or harass park users, other dogs, or wildlife. | Must have leash in possession and dog "kept under control at all times." | N/A |
| **Specific guidance for dogs on trails?** | ????? | N/A | *No, all trails administered by other three agencies (Marin Co Parks, Open Space or Water District.) | *Natural areas within parks are limited. About 2 or 3 miles of trails, technically no dogs. | *Everyone needs to yield to equestrians. No other specific guidance. | *No – Dogs are allowed throughout these lands as long as they are on leash. | No dogs on trails except for Keohoe Beach trail and designated trails in neighboring Golden Gate National Recreation Area.. | Dogs are not allowed on trails. | Yes, allowed on specified trails in the 9 preserve areas. Visitors with dogs should yield and giver hikers and horses the right-of-way. | Dogs allowed. Yield right-of-way to hikers and equestrians. | N/A |
| **Protection of sensitive habitat from off-leash dogs** | Any sensitive habitat in DPAs is fenced off or signed. | N/A | * No special guidelines. | N/A | Sensitive areas have additional dog restrictions. * Areas may restrict dogs to being on leash on fire | Dogs only allowed on leash. *Also have the authority to make temporary | Dogs not allowed on the beach south of trail at Kehoe Beach or on the | Dogs are required to be leashed to prevent disturbance. | Dog restrictions are in place partially for resource protection. | *In certain areas (wetlands, marshes, etc) dog use is prohibited to protect resources. | N/A |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | roads, an example is where there is cattle present or sensitive wildlife areas (fawning areas), or near major wetland areas. About 10 of these areas closures over the 15,000 acres. These closures are small areas of preserves, other areas of the preserves are still open. | closures, including for resource protection, but have not used this tool yet. | beach to the north of the North Beach parking lot because of snowy plovers. During elephant seal pupping and mating season, dogs and humans not allow on the beach south of the South Beach parking lot. | | | | |
| **Regulations for commercial dog walkers (y/n)** | Yes | N/A | *Have ordnance that requires permitting of commercial establishments. At this time, the county board of supervisors is that dog walkers do not fall under this definition, this could change. All other animal businesses is regulated by permit. | *No | *Yes | *No – same rules apply as to the public. | *Yes – Commercial dog walking is banned because it is a commercial use | *No special regulations. | *No special regulations. | Yes | N/A |
| **Fees for commercial dog walkers?** | Yes – sliding scale?? | N/A | N/A | N/A | *Yes – must get an annual permit for $150 a year for up to 3 walkers and $200 beyond 3 walkers. | N/A | N/A | N/A | N/A | Yes – commercial permits $200/yr, permit for individual to walk more than 3 dogs $25/year, household permit $40/year. *Walker must have permit in their procession and must be able to show this permit to park staff if asked. | N/A |
| **Limit on the number of dogs per commercial walker?** | Recommend no more than 6 dogs. | N/A | N/A | N/A | *Up to 6 dogs, but 3 have to be on leash at all times. | *None. | N/A | N/A | N/A | No more than 6 dogs. | N/A |

| Jurisdiction | City/County of San Francisco | San Mateo | Unincorporated Marin County | Marin County Parks | Marin County Open Space | Marin Water District | Point Reyes National Seashore | State of California | Midpeninsula Regional Open Space | East Bay Regional Parks | San Francisco Watershed |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Limit on the number off off-leash dogs per commercial walker** | No more than 6 dogs off-leash at a time. | N/A | N/A | N/A | *No more than 3 dogs off-leash at a time. | N/A | N/A | N/A | | Commercial walkers follow the same leash laws as individuals. | N/A |
| **Leash length maximum – commercial dog walker** | 8 feet | N/A | N/A | N/A | *6 feet | *6 feet | N/A | N/A | | 6 feet | N/A |
| **Notes on commercial dog walking regulations** | Permit for commercial dog walkers is required as well as an Animal Care and Control Agreement. Walker must have a leash for each dog.<br><br>Commercial walker use of DPA's limited to 9:00 am to 4:00 pm | N/A | N/A | *Although no regulations, commercial dog walkers use McInnis Park. It is an established use there. | *Each walker is registered and their permit is a conditional use permit. Commercial walkers must attend a trail etiquette program that is conducted by the Marin County Humane Society. Walkers carry a badge with them that is 5 inches by 7 inches and must be visible when they are walking in the preserves. The badge has a large number representing their company and their name. Walkers can only use the preserves on weekday mornings and evenings and their permit restricts them to particular places so there are not too many walkers in one place. There are currently about 14 of these permits active.<br><br>Generally good compliance, have rescinded permits for non-compliance. | N/A | N/A | N/A | | *It was a two year process with a staff and citizen committee to develop commercial dog walker regulations. | N/A |

| Jurisdiction | City/County of San Francisco | San Mateo | Unincorporated Marin County | Marin County Parks | Marin County Open Space | Marin Water District | Point Reyes National Seashore | State of California | Midpeninsula Regional Open Space | East Bay Regional Parks | San Francisco Watershed |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Outreach efforts** | Signage and brochures are distributed through a number of means including veterinary offices, SFSPCA, pet stores and RPD facilities, as well as the RPD webpage which links to other support organizations. | *Long-term policy of no dogs. Policies are on websites, brochure of the park, signage at all entry points, a lot of outreach. Issue comes up when they do a master plan for a park, and respond to these comments when they arise. | *Education, written brochures, websites, column in the newspaper, flyer with a list of places you can go with your dog. | *Signage at entrance station (and people turned away at the entrance station), on the voice mail messages, on the website. | * Have brochures that explain these policies. Commercial dog walkers have to review ordinances. Signage at every entry saying if dogs are allowed. Sensitive areas have signage. Have info at www.marinopenspace.org. | *Signage, used to have handouts at main entrance station with rules and regulations, use bulletin boards at trail heads, in the process of developing a community outreach plan (i.e. signage, need of visitors, explanation of policies, etc). | Information on website regarding regulations, brochures at visitor center's regarding dog regulations.<br><br>*Signage, 1610 radio broadcasts, public meetings where applicable | *Signs in the parks at the entry points to detail rules. Rules are in some brochures. | Docent led activities specific to dogs are available. Flyers detailing why leashes are critical will be posted in appropriate preserve signboards. *Website, | *Signs in all of the parks where there is a staging area or a developed area. All of the park rules are posted. All of the park brochures have listings of the dog rules. Dogs are on the website. | N/A |
| **Waste Regulations** | Owners must pick up and dispose of dog waste. | N/A | *No regulation in the county, some cities have waste areas but these are not in the unincorporated areas. | N/A | *Written into regulations that they need to pick up and remove the waste. Don't have garbage cans or baggies at entrances. In some areas they have them provided by the local communities or dog walkers and are maintained by these groups. Also have contracted with someone to go to the main entries to clean up dog waste, mainly an issue at the trail head. | *Not in the regulations. | *In compendium details that owner must remove dog waste. | *Waste removal not required. | *Waste removal not required by regulation. Checking into this….. | You must remove your dog's waste from all developed areas or public trails. *This is being added on to in the latest revision of the ordnance. Want to make sure that "pick up" does not mean they can leave it in the park, must deposit in a garbage can or take it out of the park. | N/A |
| **Effectiveness of Enforcement?** | | *Regulations are not completely followed. Parks are located in the backyard of | *All animal related issues of other communities. Learning that off-leash is reducing dog aggression. Take care | *Public seems to understand the regulations, where they can and cannot go with their dogs. | * 12 full time rangers and some seasonal rangers to aid in enforcement. Rangers can cite for dog regulations, some | *Dogs off-leash generate the most (or second most) citations issued on district lands. Only second to | *Compliance is 50/50. A lot of cooperative people, but also a segment of repeat | *Have peace officers in park to enforce the rules. Seems that compliance is ok, there are | *There is a problem with people following the regulations. Majority of the citations are for | *For the most part there is compliance. In the process of asking area managers to give an assessment from the park staff | N/A |

| Jurisdiction | City/County of San Francisco | San Mateo | Unincorporated Marin County | Marin County Parks | Marin County Open Space | Marin Water District | Point Reyes National Seashore | State of California | Midpeninsula Regional Open Space | East Bay Regional Parks | San Francisco Watershed |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | neighborhoods and there are both on- and off- leash dogs. Park rangers are in charge of enforcement, there are not enough to cover all areas. "Friends" groups are the most effective level of enforcement. When caught by a ranger, a warning is given and then if it happens again, citations are issued. | of licensing, dog bites, quarantine. Enforcement is extremely effective, rarely have a stray dog. | Much easier to enforce no dogs. Generally accepted policy. | seasonal cannot. The biggest issue for rangers is dogs off-leash where they shouldn't be. | bike related violation. Large emphasis on dog policy enforcement. It is a resource issue and a visitor safety issue (ie. dogs biting humans and other dogs) a high priority enforcement issue. | offenders. Write a lot of citations, writing several citations every weekend. Big part is in the south and north beach area where Snowy Plovers. | times when visitors are not compliant, but generally compliance is reasonable but not 100%. | dogs in enclosed areas (as well as other public access), off-leash dogs, and mountain biking violations. | point of view, this is currently being compiling. In the regional trail system that connects on park to another, the observation is that 90 to 95% of the people are following the rules, this is a very high use area. Some other parks where there is a lot of open space there is not as much compliance. Need to follow up to obtain this study when it is completed. | |
| **Community reaction?** | | *When completing a park master plan, citizens ask about change in policy. The policy has been in place for a long time, but they still get occasional letters of people who want to see it changed. | *Getting the community to be part of the solution. Has been clear that being heavy handed totally backfires (enforcement, drafting of ordinances, etc). Animal issues bring out huge interest. Feel that having dog off-leash is a right and not a privilege. | Public seems to understand the regulations, where they can and cannot go with their dogs. Much easier to enforce no dogs. Generally accepted policy. | * Thousands of homeowners located along the boundary of the preserve areas and they are used daily by many people. Had about 600 individual comments during implementation of the regulations about 2 years ago. The reaction at the time was basically 50/50 split between full leash law and off-leash. Board of Supervisors compromised with a partial leash law. Reaction was mixed then, and is still mixed, but there has been a positive | *There is backlash at times. Some times enforcement is confrontational. Sometimes a lack of understanding or the issue or they don't agree. | *Get feedback from a small percentage of the community. General feedback is in favor of the regulations. Small vocal minority that wants off-leash use. | *Rules have been in place for so long, seems like it is pretty well understood. Does not seem to be a big push to change what they are doing. Not too much community reaction. | *In past 2 years there has not been a large amount of public comment. When doing master plan efforts for preserves, dog use is a topic of interest. | * Dog owner groups are active and want to be notified if any change in dog areas or places where dogs are or are not allowed. Citizens show up when these matters are on the agenda. | N/A |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | reaction for providing off-leash areas. | | | | | | |
| **Other tools?** | | N/A | *Providing areas for people to go with their dogs for certain activities. Dog parks (in city areas, parks devoted to dogs) – dog parks in almost every city, ranging in size, Dog recreation areas and activities, dog training courses. Cortamadera, mall that you can bring your dog to (the Mall at Cortamadara).<br><br>Number of users at dog parks is high because it is also human venue. Sausalito dog park is a site you should see. | N/A | Designated point person for the dog-walking community to contact. Built relationships, keep dog-walking community up to date on any changes. | *Authority to close areas for resource protection, have not used this tool yet. Use signage as needed. Public education (brochures, websites, etc.). Want to develop materials to let people know where they can go with their dog off-leash. Increasing fines is a possibility, but not in practice, have an opportunity to increase this on a yearly basis. Have not raised this fine in more than 5 years. | *Emergency closure authority for animal situations, enforce closures based on harbor seal and other animal nesting or beaching areas. | None. | *Mitigation measures associated with projects, one is a low fence to keep dogs on the trail though the sensitive habitat area. | *Ability to close areas for safety or resource protection. General manager can do a change in the rules for up to 60-days and then after that it has to go to a public meeting with the board to make that change permanent. Land use plans adopted by the board for the park are used as a guide (completed by Land Use and Stewardship department), they act as an environmental and policy guide for the park, follow CEQA compliance. Protected areas show up in these plans and act as a guide. This is sometimes debated, especially in areas of high visitor use. | N/A |
| **Other** | | N/A | *In the incorporated areas, there are 6 cities with leash laws out of 11 cities. 2 of the 6 have leash laws only in certain areas. Marin is a very outdoor friendly areas and trails connect to other areas, people want to keep access consistent. | N/A | Started in 1972, were very liberal but as visitation has increased, have needed to restrict use. Two years ago "interim" guidelines put into affect. Arose from conflicts with professional dog walkers that were increasing significantly on their property. In one instance there were 15 dogs off-leash. Cases | Law has been around since mid-60s. Most people are familiar with the regulations.<br><br>Has explained to the public a seasonal leash law is not feasible because of the resource issues. Dogs harassing pregnant deer | None. | | | None. | |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | like this cause conflicts with wildlife and other concerns. Commercial use (as dog walking) prohibited unless compatible with the resources. Used East Bay as a model. | was one of the issues they were facing. | | | | | |
| **Reported incidents (e.g., dog bites and complaints) and success of off-leash use** | | Not applicable – dogs are not allowed in San Mateo Parks. | *Do not collect data on incidents that include aggression, and threaten the safety and keep those statistics.<br><br>Number of dog bites that happen are usually on the dogs property, not off the property. Keep records of where bite happened, circumstance, etc. In 2005, there were a total of 286 dog bites. Of the 286, only 26 were strays. More detailed information is available, on a incident per incident basis – no consolidated information, need to go though each report. Information is reported by the hospital usually so detail of records varies. | *In the last several years, only a couple of dog bite cases, these were relatively minor. All have occurred at McInnis park with off-leash use. A couple of complaints when people go to McInnis and see dogs off-leash and have the "fear" factor.<br><br>Personal experience – have had dogs approach and in most cases owners do not acknowledge that dog is approaching another person, could lead to uncomfortable feelings. | *Rangers do write-up reports if they witness incidents or receive complaints; dog bites handled by local humane society on behalf of open space.<br><br>Generally, dog bites, occur during both on-leash and off-leash situations; however, very few dog bites occur at all.<br><br>Issues with harassment and intimidation typically occur with dogs off-leash.<br><br>Off-leash program is relatively successful since the implementation of the limits on the number of dogs allowed per person (including commercial dog walkers). Biggest issue remains off-leash dogs in places where they are required to be on-leash. | *There are very few reported instances of conflicts on water district lands; could be attributed to leash laws.<br><br>They have incident reports, would need to go though legal to determine. Estimated only a couple in the last five years. One with a horseback rider being thrown from dogs off-leash, about five years ago. Very infrequent. Get occasional dog/dog conflict and occasional dog/person conflict. | *Dogs are not allowed off-leash; they have not had reported instances of dog bites; other complaints relate primarily to dogs not being on-leash, and dogs hassling other dogs – this is primarily an issue with off-leash dogs. Complaints are entered into the Case Incidence System, but information cannot be retrieved easily. | *Incidents are reported by peace officers, esp. if medical attention is required related to a dog bite, or if other violations occur for which citations were written (e.g., off-leash dogs); State does track incidents but it is unknown how easily the information can be retrieved. Because of the on-leash requirement in state parks, there could be very few reports. These reports would likely contain information about the nature of the incidents (e.g., whether or not dogs were on or off-leash at the time) | *Have records, but do not have them available. Most reports are those that result in injury to a person – don't really track dog vs. dog incidences. Will be able to provide this database for future use – he is tracking this down but might take a couple of weeks. Dog incidents are few because there are only certain preserves where they are allowed and only one where they are off-leash. | *Records of non-injury incidents are kept by Risk Department in database of 'aggressive animal reports.' These reports are kept for dogs and other animals. If an injury is reported, the incident goes to public safety (park police) who filter it back to Risk Department and also notify animal control. Specific information from this database can be provided, if needed. Most incidents are dog-dog conflicts (e.g., bites).<br><br>Based on feedback from Field Supervisors, approximately 60-70% of people with dogs comply with requirements in definition of "control." When reminded/ educated about rules, control is more effective. When people feel they are 'alone' in an area they tend to relax their | N/A |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | control. | |
| **Are there off-leash areas with access to water?** | | N/A – Dogs are not allowed in San Mateo Parks. | *In open space there is, this is not in unincorporated. Unincorporated have bay and ocean waters, and are some lakes and reservoirs that are not on open space property. To get a map of this go to marinmap.org, this will show the unincorporated areas and the water features. | * There is water at McInnis site but dogs are not supposed to access it because of endangered species (a marsh and a small vernal pool).<br><br>At Upton Beach can access the water. | *Some fire roads where off-leash use is allowed do provide access to water; such roads adjacent to wetlands on CDFG lands are restricted to on-leash uses only. | N/A – Dogs are not allowed in the reservoirs. Most common complaint they get is not dogs conflicts, but dogs in the water. | N/A | N/A | *In the off-leash area there is not a water body. In the other areas, there may be water bodies, but they have to be on leash, and on-trail, so cannot access the water. | *Fresh and salt water areas are accessible in off-leash areas, but contact with the water is generally prohibited in many places. | |
| **Person Contacted** | Bob Palacio (415) 279-9454 | Dave Holland 650-599-1394 | Cindy Machado 415-883-4621 X209<br><br>415-506-6209 | Ron Paolini (415) 499-6390, Steve Petterly, (415) 499-6394 | Dave Hansen (415) 507-2820 | Casey May (415) 945-1179 | Colin Smith – Chief Ranger (415) 464-5175 | Roy McNamee (415) 435-1563 | Kirk Lenington (650) 691-1200 | Jack Kenny (510) 544-2511 | Irina Torrey (415) 934-5700 |
| **Date contacted** | * need to get contact info from Sherwin, she will not return till 9/1/06. 9/5/06 called Bob and left message. 9/8/06 left message. Interview not completed.<br><br>9/15/06, 9/18/06, 9/28/06 – lm (re: incidents and access to water from off-leash areas) | 8/30/06 – Completed interview. | emailed 9/8/06, called 9/8/06 –lm, called 9/11/06, she is out of the office till 9/12/06. Interview completed 9/18/06. | 8/28/06 – lm<br>8/30/06 – lm<br>9/8/06 – lm . Interview not completed.<br>9/15/06, 9/18/06 – lm (re: incidents and access to water from off-leash areas)<br>9/20/06. Interview completed 9/28/06. | 8/28/06 – Completed interview, recommended talking to Ron Paolini of the county parks<br>9/19/06 – discussed incidents and access to water from off-leash areas. | 8/22/06 – Completed interview.<br>9/15/06 – lm (re: incidents and access to water from off-leash areas)<br>9/18/06 – lm again re: incidents/access to water. LG completed interview 9/27/06. | 8/28/06 – lm<br>8/30/06 – lm<br>9/1/06 – Completed interview.<br>9/15/06 – discussed incidents | Left message 8/22/06. Followed up 8/28/06 completed interview.<br>9/15/06 – left message<br>9/20/06 – interview for incidents was completed. | Left message 8/22/06. Followed up 8/28/06 left message and email. Out of office till 8/30/06. Talked to Kirk on 8/30/06, he will be providing additional information.<br><br>9/18/06 – lm (re: incidents and access to water from off-leash areas) | Left message 8/22/06. Followed up 8/28/06 and left message and email. 8/28/06 – Completed interview.<br><br>9/18/06 – lm (re: incidents and access to water from off-leash areas), 9/28/06 lm<br><br>10/13/06 – spoke with Jack Kenny re: incidents, access to water, and success/effectiveness of voice control definition. | Left message 9/28/06 to see if any dog bit info. Most questions not applicable to PUC. |

Notes: *Denotes information was received during telephone interview with noted individual.

**References:**

**City/County of San Francisco**

San Francisco Recreation and Park Department. 2002. Final Dog Policy.

**San Mateo**

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**Marin County Water District**

**Point Reyes National Seashore**

National Park Service. 2001. Visiting with Dogs at Point Reyes National Seashore. Site accessible at: http://www.nps.gov/pore/visit_dogs.htm. Site visited August 22, 2006.

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**Midpeninsula Regional Open Space District**

Midpeninsula Regional Open Space District. 2004. Great Activities for Dog Owners. Site accessible at: http://www.openspace.org/activities/ideas_for_dogs.asp. Site visited August 22, 2006.

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**East Bay**

East Bay Parks. nd. Dogs in the Regional Parks. Site accessible at: http://www.ebparks.org/dropdown/dogs.htm . Site visited August 22, 2006.

**San Francisco Public Utilities Commission**

San Francisco Public Utilities Commission. 2006. General information regarding the commission and the lands they manage. Site accessible at: http://www.sfwater.org/. Site visited August 22, 2006.

General:

Code of Federal Regulations. Title 36 – Parks, Forests and Public Property. Chapter I – National Park Service Department of the Interior. Part 2 – Resource Protection, Public Use, and Recreation. Section 2.15 Pets.

**Meeting with Dogwalking Representatives**

**November 13, 2009**

**8:00-9:30 a.m.**

Invitees:

Frank Dean, GGNRA Acting Superintendent
Chris Powell, GGNRA Public Affairs
Daphne Hatch, GGNRA Resource Management
Marybeth McFarland, GGNRA Protection Division
Connie Leonard, USPP
Martha Walters: Crissy Field Dog,
Linda Mackay: Fort Funston Dogwalkers
Karin Hu: Fort Funston Dogwalkers
Joe Hague: ProDog, professional dogwalkers
Gary Fergus: Crissy Field Dog
Laurie Kennedy Routhier: SFSPCA
Jan McHugh-Smith: SFSPCA

**Agenda**

1) Meet Acting Superintendent Frank Dean

2) Update on DEIS for dog management and review calendar

3) Discussion of current status of dogwalking at GGNRA San Francisco sites (Fort Funston, Ocean Beach and Crissy Field)

4) Update on steps to safeguard plover areas and allow recreation (gates and signage)

5) SPCA and Crissy Field Dog Group Outreach Programs (website, videos, education at public sites)

6) Other dog management-related issues

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NATIONAL PARK SERVICE
Protecting America's Treasures
for Future Generations

# GOLDEN GATE NATIONAL RECREATION AREA

## Guidelines for regulated off-leash areas (ROLAs):

**General Use Guidelines:**

- Dog walkers may walk dogs off leash only within designated ROLAs (*as now identified in the range of alternatives, and as identified in the preferred and selected alternative once the Final EIS is published and the Record of Decision is signed*.):
    - ROLA areas are subject to adaptive management as identified in each alternative. Subject to monitoring, an area can be changed from ROLA to on-leash or no dogs if compliance is not achieved.
    - Thresholds that would trigger application of adaptive management will be identified in each alternative.

- Each off leash dog must be under voice and sight control at all times, meaning that dogwalkers must be able to recall their dog promptly, and shall demonstrate this ability when requested by Law Enforcement personnel.

- Any uncontrolled dog is prohibited. Dogs in a ROLA are to be kept under control at all times. Dogs are considered under control when they are within direct eyesight of the owner/guardian/handler and when they have the ability to immediately return to their owner/guardian/handler. Dogs are presumed to not be under control if they:
    - annoy, harass, or attack people, livestock, or other leashed or unleashed dogs,
    - intentionally or unintentionally annoy, pursue, hunt, harass, harm, wound, chase, attack, capture, or kill wildlife,
    - enter leash-required or dog-prohibited areas, and/or
    - dig, destroy vegetation, or enter fenced or closed areas.

- Aggressive dogs (snarling, unwanted jumping) are not allowed in ROLAs and are subject to fines per 36 CFR 2.34(a)(4).

- Dogs under four months old must be leashed.

- Dogs in heat are not allowed in ROLAs.

<u>Requirements</u>

- Dog walkers using ROLAs must have current ROLA certification (refer to guidelines of ROLA certification program).

- Dogs must be licensed and wear an ID at all times, including name and phone number of the owner.

- All dog walkers must have a leash for each dog under their care.

- Dogwalkers must keep dogs on leash in parking lots and short distance beyond (*distance beyond varies depending on conditions/resources at each site, see range of alternatives*).

- Dog walkers must keep dogs out of any area closed by fence or sign for restoration, habitat protection or safety concerns.

- Dog walkers must pick up their dogs' feces immediately and dispose of them in a garbage container.

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- Dogs must be licensed and wear an ID at all times, including name and phone number of the owner.

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- Dog walkers must keep dogs out of any area closed by fence or sign for restoration, habitat protection or safety concerns.
- Dog walkers must pick up their dogs' feces immediately and dispose of them in a garbage container.

Note to reader:  although dated April 2000, this document is current as of June 2009.

# United States Department of the Interior

NATIONAL PARK SERVICE
WASO RANGER ACTIVITIES DIVISION
SPECIAL PARK USES PROGRAM MANAGER

IN REPLY REFER TO:

Memorandum

Date: December 7, 2004

To: Recipients of RM-53

From: Dick Young, SPU Program Manager, WASO RAD

Subject: Printing RM-53

The sole intention of this file is to give printing instructions and tips for RM-53, Release Number 1 dated April 2000.

RM-53 has been purposefully saved as a series of individual files, each file a chapter, or appendix, or exhibit. It was done this way to make it easier to update. Future updates will simply change-out the entire file (chapter or appendix) and be sent out as a one for one exchange. The entire document (margins and gutters) is set up for double-sided printing and is intended to be printed for use in a loose leaf notebook. The following notes apply:

- With two exceptions as noted below, all files on this disk were written and saved in Word 97 for Windows 98. The suggested procedure for copying these files is to create a sub-directory in Word labeled RM-53, then copy all files to that sub-directory.

- In the main, all documents on this disk were written using the font: Times New Roman 12.

- The file names reflect Chapters (C-4p.doc = Chapter 4), Appendix (A-10p.doc = Appendix 10), or Exhibits (A-10X1p.doc = Exhibit 1 of Appendix 10). The small 'p' after each filename is the edition indicator and is not significant.

- The printing order should follow the Table of Contents (CONTENTp.doc) sequence.

- Other than this file, there are four files that do not follow the above descriptions. These files are meant to either be included in RM-53 or attached to it as described here:

  - COVER MEMORANDUM.doc is the memo of transmittal from the Associate Director Operations. This is meant to be inserted as the first page in the notebook.

  - FLOCHRT1.xls is a MS Excell workshop file. This is the "INITIAL REQUEST" flow chart that must be inserted into the document as Chapter 8 page 5. Parks that cannot print the Excell file may contact WASO RAD for printed copies of this chart.

  - FLOCHRT2.xls is a MS Excell workshop file. This is the "RENEWAL REQUEST" flow chart that must be inserted in the document as Chapter 8 page 7. Parks that cannot print the Excell file may contact WASO RAD for printed copies of this chart.

  - DO-53.doc is the electronic (signed) copy of Director's Order 53 and should always accompany RM-53.

The files on this disk, and this disk itself may be reproduced at need. The actual CD disk this arrives on is a CD-R and cannot be rewritten. Files on this disk must first be copied to another floppy or hard drive before they can be reformatted or altered in any way.

Any questions either on the above or any part of RM-53 should be directed to Dick_S._Young ccmail or (757) 898-7846, or WASO RAD at (202) 208-4874.

# RM-53

# REFERENCE MANUAL

# SPECIAL PARK USES

**RELEASE NUMBER 1** **APRIL 2000**

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[Electronic copy – original on file in the WASO Office of Policy]

# Director's Order #53: Special Park Uses

**Approved:** ___/s/ Robert G. Stanton_____
Director, National Park Service

**Effective Date:** _April 4, 2000_____

**Sunset Date:** ___April 4, 2004_____

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## 1. INTRODUCTION

A special park use is a short-term activity that takes place in a park area and:

- Provides a benefit to an individual, group or organization, rather than the public at large;
- Requires written authorization and some degree of management control from the NPS in order to protect park resources and the public interest;
- Is not prohibited by law or regulation; and
- Is neither initiated, sponsored, nor conducted by the NPS.

The approval or denial of requests to engage in special park uses is an important and continuing responsibility of superintendents. *Superintendents should be aware that local decisions related to permitting special park uses may have Service-wide implications, and set precedents that create difficulties for other superintendents. In such instances, the superintendent should consult with the regional or Service-wide specialist.*

A special park use may involve either rights or privileges, and may or may not support the purposes for which a park was established. In either case, whether the request is approved or denied, the superintendent's decision must be able to withstand review, challenge and litigation. Whether the request is approved or denied, the superintendent's decision must be consistent with service-wide policies and consistent with decisions made on both a park and on a service-wide basis. The judicial standard of review is whether the decision is "arbitrary and capricious."

A special park use does not include any activity managed under the Concessions Management Improvement Act of 1998 (*16 USC 590l*), any recreation use covered by section 4 of the Land and Water Conservation Fund Act (*16 USC 460l-6a*), any recreation use covered by the Recreational Fee Demonstration Program (*16 USC 460l-6a Note*), any leasing activity pursuant to the National Historic Preservation Act (*16 USC 470h-3*), or Section 802 of the National Parks Omnibus Management Act of 1998 (*16 USC 1a-2(k)*).

## 2. AUTHORITIES

**2.1** The authority to issue this Director's Order is contained in 16 USC 1 through 4, and in delegations of authority contained in Part 245 of the Department of the Interior Manual.

**2.2** The 1916 NPS Organic Act and a 1978 amendment to the NPS General Authorities Act place limits on the kinds of activities that may be allowed within the National Park System. The most important provisions read as follows:

> *[The National Park Service] shall promote and regulate the use of the [national parks] by such means and measures as conform to the fundamental purpose of the said parks…, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations* (16 USC 1).
>
> *The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress* (16 USC 1a-1).

These provisions of law place obligations on the National Park Service to manage use of park areas in a manner that will protect against the impairment or derogation of park resources, values and purposes.

**2.3** Superintendents must be able to cite a specific right or statutory authority to allow a special park use. Rights may include those granted under the Constitution, or through treaty or property entitlements. Statutory authorities include general statutes ( *e.g., 16 USC 1*), or a park-specific statute. In addition to rights or statutory authorities, managers must also consider Executive orders, regulations, and case law to determine whether a proposed activity or special park use is allowed. Examples of authorities most frequently cited for special park uses are:

- *16 USC 1-4*, for general uses
- *16 USC 5 and 79*, for rights of way

Examples of authorities for charging fees and recovering costs related to special uses are:

- *16 USC 3a*, for cost recovery
- *31 USC 9701*, for fee collection

*(See also section 10.1.)*

## 3. POLICY GUIDANCE

Primary policy guidance on special park uses is contained in section 8.6 of NPS *Management Policies*. That guidance is summarized in, and supplemented by, this Director's Order.

**3.1 General.** The National Park Service may permit a special park use if the proposed activity will not:

- Cause injury or damage to park resources; or
- Be contrary to the purposes for which the park was established; or
- Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic or commemorative locations within the park; or
- Unreasonably interfere with the interpretive, visitor service, or other program activities, or with the administrative activities of the NPS; or
- Substantially impair the operation of public facilities or services of NPS concessioners or contractors; or
- Present a clear and present danger to public health and safety; or
- Result in significant conflict with other existing uses.

A superintendent must deny initial or renewal requests upon finding that any of the above conditions will not be met. Existing activities that do not meet these conditions must be phased out.

**3.2 Mandatory or Discretionary.** Some special park uses are specifically authorized in a park area's enabling legislation, which may indicate that permitting is mandatory ("The Secretary shall permit ..."), or discretionary, ("The Secretary may permit ..."). In either instance, the proposed use is considered to be both authorized and appropriate, as long as adequate safeguards are established to protect park resources, values, and visitors.

**3.3 Right or Privilege.** A superintendent must determine whether a request for a special park use is prohibited or mandated, or involves a <u>right</u> or a <u>privilege</u>. A right is based on property ownership, legislative or treaty entitlement, or Constitutional guarantee. Where none of these factors is present, the use is a privilege over which the superintendent may exercise varying degrees of discretion and control. Generally speaking, citizens must be afforded the opportunity to exercise their rights; however, a superintendent may establish permit conditions to protect park visitors, park resources and values. When considering a privilege, the superintendent has the additional task of determining whether the activity will be allowed.

**3.4 Compliance.** The decision to issue or deny a permit for a special park use flows from the appropriate compliance under the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act of 1966 (NHPA), and other applicable laws. For example in the case of NEPA, if the proposed special use is not covered by a categorical exclusion, the superintendent, in preparing an EA or EIS, is responsible for identifying reasonable alternatives, both inside and outside the park, and completing appropriate compliance documentation. Although the superintendent may require the applicant to prepare this documentation, the NPS remains responsible for its content. Regardless of who prepares compliance documents, the applicant is responsible for paying all NPS costs incurred in meeting NEPA and 106 compliance requirements.

**3.5 Permit Terms and Conditions.** Superintendents will establish permit conditions that protect NPS and public interests, including park resources and values. Special park uses may be authorized for a period of not-to-exceed 5 years. Rights-of-way are addressed separately and may be issued for longer than 5 years. (*See Section 10.*)

**3.6 Permit Fees and NPS Cost Recovery.** Except as identified in Section 3.7 below, the NPS will charge fees and recover costs for special use permits unless prohibited by law or Executive order, or when the proposed use is protected by the First Amendment or involves another right and not a privilege. Charges should reflect the fair market value of the use requested. The fair market value of a special park use is the value of the lands or facilities used, plus the NPS costs incurred in managing or supporting the use. The NPS will retain funds recovered for the cost of managing a special park use. Charges arising from the use of NPS lands and facilities must be deposited in the U. S. Treasury, unless otherwise specifically authorized by law.

When special use permit fees are proposed to be increased, the superintendent will notify the permittee and/or the public of the increase at least sixty (60) days prior to the fee changes taking effect. (*See 3.12 below. See also Reference Manual 53 Chapter 10.*)

**3.7 Permit Fee Waivers.** A waiver from the requirements to charge permit fees and to recover costs may be appropriate when:

- Charging and collecting are not cost-effective;
- A waiver is considered an appropriate courtesy to a foreign government or international organization;
- The permittee is a state, local, or Federal agency or Native American tribe or group; or
- The superintendent determines that the proposed use will promote the mission of the NPS or promote public safety, health, or welfare.

**3.8 Recreation Fees and Non-Recreation Uses.** Special park use permittees who enter a park for recreational purposes are subject to the same entrance fees, recreation use fees, and recreation permit fees as the general public. However, persons engaging in special park uses that are not recreational in nature are exempt from entrance fees. Examples include but are not limited to: First Amendment; agricultural; grazing; filming activities; NPS authorized research; Federal, state and local government business; and outings conducted by schools and other bonafide educational institutions for educational purposes.

**3.9 Fees Charged by Permittee.** A permittee, while on park property, may not collect admission or any other money associated with a special event. All permittee monetary transactions must take place outside the park.

**3.10 Donations.** The NPS has authority to accept donations, but not to solicit donations. Therefore, NPS managers will not initiate discussion of a possible donation with any permit applicant. In addition, the applicant must not be approached by a representative of a cooperating association, friends group, or other park partner for a donation while the application is being considered, the permit is being negotiated, or the permitted activities are ongoing.

An applicant's offer of a donation to the park must not in any way influence the superintendent's decision to issue or deny a permit, nor may it influence the manner in which a permit is administered. If a permit applicant voluntarily indicates an interest in making a donation to the park, the superintendent must refrain from discussing the donation until after the permitted activity is completed. Superintendents may not accept donations in lieu of recovering costs.

**3.11 Administrative Record.** Superintendents must develop an appropriate administrative record to support their decisions. The information must be in writing and, depending on the sensitivity of the matter, contain the dates, discussions, and rationale involved in the decision process and the determination of all fees. In addition, the administrative record must contain all letters, compliance documentation, notes, and other documents related to the issuance of the permit, including a copy of the executed permit. Permits issued without fees or cost recovery will be retained in the park files for 1 year and 1 day following expiration of the permit. Permits issued with fees or cost recovery will be retained in park files for 6 years and 3 months following expiration of the permit.

**3.12 Renewals.** Superintendents must carefully review each permitting instrument for a special park use prior to renewal. A request for renewal should be considered as carefully as if it were an initial application. The review should take place before the existing permit expires, and must ascertain the continuing validity of the original findings as well as the Administrative Record of what has taken place since those findings. The review will determine whether the activity is still mandated or legally permissible, and whether it continues to be appropriate and compatible with the purposes of the park. The Renewal Flow Chart found in Reference Manual 53 Chapter 8 should be used for this purpose.

## 4. PERMITTING INSTRUMENTS

**4.1** There are two instruments that may be used to authorize a special park use: (1) a Special Use Permit, or (2) a Right-of-way Permit.

**(1) Special Use Permit.** Instrument issued by a superintendent to an individual or organization to allow the use of NPS-administered resources and to authorize activities in *36 CFR Parts 1-7* that require a permit. *(See Reference Manual 53.)*

**(2) Right-of-way permit.** Instrument issued by a regional director to authorize any new utilities, including water conduits, on NPS lands. This includes those utilities not owned by the NPS, but serving the NPS and/or NPS concession facilities.

- Superintendents may, as appropriate, renew, amend, or convert other documents to right-of-way permits for existing utilities. Right-of-way renewals and conversions may be signed by the superintendent.
- NPS-owned utilities do not require a right-of-way permit, nor is one required when the specific use is authorized by a property right, such as a deeded easement, or by park-specific or other legislation when the statutory language is so written as to have the same effect as a deeded easement.
- A right-of-way permit does not grant any interest in the land, and is a revocable permit issued at the discretion of the NPS.
- When the right-of-way permit format prescribed by Reference Manual 53 is used without substantive changes, it does not require further review by the Solicitor.

**4.2 Other Permits.** NPS issues other permits and signed agreements, including but not limited to research, collection, and use of natural and cultural resources. Requirements for these permissions are found in other Director's Orders and related Reference Manuals (such as DO #24 NPS Museum Collections Management, DO #28 Cultural Resource Management, and DO #77 Natural Resources).

## 5. PERMITTING AND RENEWAL CONSIDERATIONS

**5.1 Reasons for Issuing a Permit.** There are three primary reasons for issuing a permit, regardless of type:

- To impose conditions to manage the activity and prevent impairment or derogation of resources, values, and purposes for which the park was established;
- To obtain the signature of the permittee agreeing to the conditions and other statements contained within the document; and
- To establish a written account of the special use for inclusion in the administrative record.

**5.2 Basic Requirements.** To receive consideration, a proposal to engage in a special park use must be submitted in writing; be consistent with applicable legislation, Federal regulations and administrative policies; avoid visitor use conflicts; and should not create unacceptable impacts to park resources. *(See 3.1.)*

**5.3 Administrative Record.** Special park uses do not have to be allowed simply because a request has been made and discretionary authority for such use exists. The need to develop a rationale for the approval of each special park use request is as important as it is for the denial of such requests. The decision to approve or deny a special park use should be based on objective data and recorded in the administrative record.

**5.4 Flow Chart.** Superintendents must follow the “Flow Chart For Special Park Use Initial Requests” (see Reference Manual 53 Chapter 8) to ensure that all requirements of law, regulation, and NPS policy are addressed. Any special park use that is approved must be documented in writing, have a specific date for expiration, contain safeguards for the protection of the park's resources and values, and have an adequate administrative record.

**5.5 Termination.** Occasionally, activities or uses that passed an initial evaluation are no longer permissible. If a previously-permitted activity is found to be without legal authorization, or is judged to be no longer appropriate and compatible with current policy or the purposes of the park and additional stipulations would not mitigate enough to make it appropriate, it must be terminated.

## 6. PERMIT PROVISIONS

Superintendents will ensure that measures to protect the United States' interests are incorporated into permits for special park uses. To ensure this protection, superintendents will include in each permit issued some, or all, of the following items, depending on the activity. (The following items, however, may not be imposed on First Amendment activities.)

**6.1 Performance Bonds.** Performance bonds or deposits are the permittee's guarantee of compliance with permit conditions and reimbursement to the park for damage to resources and/or facilities as a result of the permittee's activities. An amount adequate to cover the cost of restoration, repair, rehabilitation and cleanup of the area may be required. Should resource damage beyond that envisioned by the original performance bond result from the permittee's use, the park may file suit against the permittee under the authority of *16 U.S.C. 19jj*, Park System Resource Protection.

**6.2 Liability Insurance.** Liability insurance protects the government from negligent actions by permittees. Insurance in an amount sufficient to protect the interests of the United States may be required as a condition of the permit.

**6.3 Property Insurance.** Adequate property insurance coverage should be required whenever Federal buildings and/or facilities are being made available pursuant to a permit.

**6.4 Hold Harmless/Indemnification.** This is a legal statement intended for use as a condition of a permit. It states that the Federal government, its agents and employees, cannot be held liable for claims for damages or suits for any injuries or deaths from any cause occasioned by the permittees' occupancy and use of the land included within the permit.

**6.5 Tort Claim Provision.** This statement is used in lieu of an indemnification requirement when issuing permits to other Federal agencies. While it is directed mostly at the occupancy of NPS property by the other agency, it might be used for other purposes.

**6.6 Anti-Deficiency Act.** This statement protects the NPS against claims arising from an executed Agreement, which would be in excess of the fiscal year appropriation for that agreement.

**6.7 Bankruptcy Termination.** While this statement is primarily aimed at agricultural Special Use Permits, it might be appropriate under other circumstances and other instruments, depending on the use. Its purpose is to prevent the park or park lands from being claimed as an asset or becoming involved in any part of a settlement if the permittee becomes involved in bankruptcy proceedings.

## 7. NATIVE AMERICAN RIGHTS

The NPS, to the extent consistent with each park's legislated purposes, will develop and execute its programs in a manner that reflects knowledge of and respect for the cultures - including religious and subsistence traditions - of Native American tribes or groups with demonstrated ancestral ties to particular resources in parks.

The NPS will be as unrestrictive as possible in permitting Native American access to and use of traditional sacred resources for customary ceremonials, provided that such use does not cause derogation of the resources.

The NPS will permit members of Native American tribes or groups to have access to park areas to perform traditional religious, ceremonial, or other customary activities at places that have been used historically for such purposes. The Service will not direct visitor attention to the performance of religious observances unless the Native American group so wishes.

Members of Native American tribes or groups may enter parks for traditional non-recreational activities without paying an entrance fee.

## 8. FIRST AMENDMENT ACTIVITIES

The First Amendment to the United States Constitution provides:

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

**8.1 General.** Freedom of speech, the press, religion, and assembly are rights, not privileges. However, the courts have recognized that activities associated with the exercise of these rights may be reasonably regulated to protect legitimate government interests. Therefore, in order to protect park resources, the NPS may regulate certain aspects of First Amendment activities, such as the time when, the place where, and the manner in which they are conducted. NOTE: It is the *conduct* associated with the exercise of these rights that is regulated, and never the *content* of the message. There are also First Amendment issues associated with photography and filming activities addressed later in this Director's Order. NPS regulations pertaining to First Amendment activities are found at *36 CFR 2.51 and 2.52*, or at *36 CFR 7.96(g)* for designated park units in the National Capital Region.

**8.2 Religion.** The First Amendment also prohibits the government from supporting or promoting a particular religion, religious view, or religious organization. However, it does not prohibit the National Park Service from permitting religious activities in park areas, in the same way as the Service would permit the exercise of any other First Amendment activity.

**8.3 Equal Protection.** The principle of equal protection, guaranteed by the due process clause of the Fifth Amendment, provides that, to the extent any particular activity is permitted, similar First Amendment activities may not be excluded. Therefore, any restraints imposed must be administered even-handedly to all groups and individuals for activities similarly situated. The NPS may not permit one group to engage in conduct while prohibiting others under similar circumstances.

Superintendents must be particularly careful to be neutral in their judgment, and not to favor organizations with which they are personally familiar, or whose "message" they privately support.

**8.4 Political Events.** Political events may be either First Amendment activities or special events. Typical examples of First Amendment events include public demonstrations, assemblies, or other forms of public expression of opinions and views. Examples of non-First Amendment events include political fund-raisers and other by-invitation-only political events not normally open to the general public. In addition to all the normal considerations involved in allowing special events in the parks, superintendents must take into consideration whether or not the activity would be permitted if requested by any other group.

## 9. WATER RIGHTS

Special park uses may involve the use and/or conveyance of water. Water law, both Federal and state, governs the manner, timing, and amount of use that any party, including the National Park Service, may make of any water body, including both surface and ground water. If a water use is not authorized under either Federal, state, or common law, then such use will not be permitted in an NPS unit.

Policy and additional laws specific to the National Park Service govern the sale, or other form of disposal, of water from Federal lands administered by the NPS. The general thrust of these laws and policy is that the NPS has no excess or surplus water and that water cannot be sold, given away, or otherwise provided for non-NPS use except under very limited circumstances.

Specific guidance on the sale or lease of services, resources, or water available within an area of the National Park System is available from the Water Resources Division, Water Rights Branch.

*(See also Director's Order #35: Sale or Lease of Services, Resources, or Water.)*

## 10. RIGHTS-OF-WAY

**10.1 Authorities.** The NPS may issue right-of-way permits only for those uses or activities specifically authorized by Congress and only if there is no practicable alternative to such use of NPS lands. Authority for a utility Right-of-Way (ROW) through parks is found in *16 USC 5* for radio, television and other forms of communication transmitting and receiving structures, facilities and antennas (including telecommunication antenna sites); and *16 USC 79* for electric power, telephone and telegraph lines, and a wide variety of water conduits (including sewer); or in a very few cases, park-specific legislation.

Guidance for authorizing roads and highways in NPS areas is found in Director's Order #87. Authority for highways that are part of the Federal Aid Highway System is found at *23 USC 317*. Authority for permitting access to in-holdings in Alaska park units was granted by Public Law 96-487, title XI, §1110(b) *(16 USC 3170(b))* .

Examples of uses for which there are no general authorities are roads that are not a part of the Federal Aid Highway System (National Highway System), and oil, gas, or other petroleum product pipelines. Oil and gas lines that serve NPS facilities only may be authorized under *16 USC 1-3*, but these lines may not be extended to serve any other purpose. If authority for a requested use is not found in general or specific legal authority, the park must deny the use. Should an unauthorized right-of-way already exist, the park should contact the regional program manager for resolution.

**10.2 Regulations.** NPS general regulations regarding ROW permits are located at *36 CFR Part 14*. The regulations for NEPA Section 102 and NHPA compliance are located at *40 CFR Part 1500* and *36 CFR Part 60, 63 and 800*. Alaska-specific regulations on ROW's and NEPA compliance are located at *43 CFR*.

**10.3 Telecommunication Antenna Sites.** Director's Order 53A, "Wireless Telecommunications," is hereby rescinded and replaced by the applicable provisions of this Director's Order. The NPS will comply with the Telecommunications Act of 1996 and any other policies, requirements, or instructions that are applicable to the Service. In complying, superintendents will:

- Encourage preliminary meetings with telecommunication industry companies who wish to discuss pending or proposed applications for sites in the park to explain park concerns and understand industry timeframes.
- Encourage meetings with the applicants during the post application decision process as necessary, but especially if the manager is considering denying the application. Such meetings should take place prior to written notification of denial.
- Consider the safety of the visiting public when reviewing telecommunication site applications, including the potential benefit of having telephone access to emergency law enforcement and public safety services.
- Ensure that, when an application is submitted, the park replies in writing within 10 business days with an initial response on the application, and that response will be ‘yes’ (probably a known categorical exclusion requiring very minor additional information to be submitted), ‘no’ (with reasons in writing), or ‘maybe’ (with additional information to be submitted).
- Ensure that, to the extent possible, the timeline and detailed steps enumerated in Reference Manual 53 are followed and the permit is issued or denied.
- Ensure that compliance actions and reviews will be conducted expeditiously and consistent with all applicable statutes.

A telecommunication use is considered a utility and, like other utilities on NPS lands, will be authorized using the right-of-way permit process described in Reference Manual 53. *16 USC 5* will be used as the authority to permit telecommunication antenna sites.

**10.4 Wilderness.** Except as specifically provided by law, there will be no permanent road, structure or installation within any study, proposed, recommended, or designated wilderness area. This includes the installation of utilities. (See the Wilderness Act *16 USC 23*). The NPS will not issue any new right-of-way permits or widen or lengthen any existing rights-of-way in study, proposed, recommended, or designated wilderness areas. *(See also Director’s Order #41: Wilderness Preservation and Management)*

## 11. AGRICULTURAL USE

Special Use Permits (SF 10-114) will be issued only for agricultural activities which meet defined objectives of restoring or perpetuating human-influenced landscapes identified in NPS planning documents. If a desired agricultural use is not specifically authorized in a park's enabling legislation, a superintendent may issue an agricultural permit under *16 USC 1-3*.

In permitting agricultural use of NPS lands, the NPS will foster practices which conserve soil, protect natural waterways and groundwater, control proliferation of exotic species and avoid toxic contamination of the environment. Benefits and potential impacts of agricultural use should be carefully weighed. In no case will a permit be issued where the activity involved would impair or derogate any natural or cultural resource. Special consideration needs to be given to riparian areas, wetlands, and protection of threatened or endangered species and their habitats.

## 12. DOMESTIC LIVESTOCK MANAGEMENT

**12.1 General.** Each park that allows livestock use, including parks where livestock is managed by other agencies, will develop a livestock management plan. The NPS will allow livestock use only when the use is:

- Specifically authorized by a park's enabling legislation or other legislation; or
- A reserved right of use arising from the acquisition of a tract of land; or
- Required in order to maintain a historic scene; or
- Conducted as a necessary and integral part of a recreational activity appropriate to the park.

No livestock use or activity, regardless of how authorized, will be allowed that would impair or derogate the resources, values or purposes for which a park was established. In particular, livestock use that depletes or degrades non-renewable resources, or whose effects cannot be mitigated, will not be allowed.
The use of pack-in feed--preferably pellets--is encouraged for all pack and saddle stock while on the trail, and is required whenever grazing would have adverse impacts on a park's resources. When not actively engaged in recreational activities, pack and saddle stock will either be removed from the park or be confined within an appropriate corral or other structure, and fed pelletized feed or hay that is free of weed seeds.

**12.2 Permitting Instruments.** Grazing activities that are allowed will be conducted only pursuant to the terms and conditions of a special use permit, property lease, concessions contract or commercial use authorization.

In addition to any other penalty provisions, violation of the terms and conditions of the permit may result in revocation of the livestock use privilege.

*(See Director's Order #38: Property Leasing; also Director's Order #77 and Reference Manual 77-3 for livestock management requirements. Also see sections 8.6.8--Domestic and Feral Livestock Management, and 4.4.10—Exotic Species, in NPS Management Policies.)*

## 13. SPECIAL EVENTS

**13.1 General.** Special events are activities, such as sporting events, pageants, regattas, public spectator attractions, entertainment, ceremonies, large group camps, or rendezvous, which fall under the category of privileges. Special events differ from public assemblies and public meetings in that the latter activities are rights protected by the First Amendment.

A superintendent is required to apply the criteria spelled out at *36 CFR 2.50*, or, for the designated park units in the National Capital Region, the special regulations at *36 CFR 7.96(g)(4)(vi)*. These regulations authorize special events, provided:

- There is a meaningful association between the park area and the event;
- The observance contributes to visitor understanding of the significance of the park; and
- The superintendent has issued a permit.

Generally speaking, these criteria should be interpreted as being inclusive rather than exclusive, since most visits to national parks will entail some meaningful association and impart some understanding of the significance of the park. However, 36 CFR 2.50 requires that a permit be denied if, in the superintendent's opinion, the special event will:

- Cause injury or damage to park resources; or
- Be contrary to the purposes for which the park was established, or unreasonably impair[1] the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative locations within the park; or
- Unreasonably interfere with the interpretive, visitor service, or other program activities, or with the administrative activities of the NPS; or
- Substantially impair[1] the operation of public facilities or services of NPS concessioners or contractors; or
- Present a clear and present danger to public health and safety; or
- Result in significant conflict with other existing uses.

It is the Service's intent to apply these criteria in a manner that will make the permitting process more uniform Service-wide, reduce the possibility of superintendents denying permits without good cause, and result in the timely processing of permit requests.

*(See also Management Policies 8.6.1; and see 36 CFR 7.96(g) for special considerations applicable to the National Capital Region.)*

**13.2 Political Events.** Political events may be First Amendment activities or special events. First Amendment activities of this nature are public demonstrations, assemblies, or other forms of public expression of opinions and views (see section 8.4). Examples of special events in the same

[1] Although the regulatory language implies some discretion in allowing impairments, the Organic Act prohibits any impairment of park resources or values.

vein are political fundraisers and other invitation-only political events not normally open to the general public.

**13.3 Sale of Food or Merchandise.** In general, the sale of food or merchandise in the parks without a permit is prohibited by *36 CFR. 5.3*. Most sales operations within parks are managed under concession contracts or agreements with cooperating associations. Sales operations are restricted to indoor facilities specifically designated for use by concessioners and cooperating associations for that purpose.

The sale of printed material in connection with a special event or First Amendment activity is allowed, but only as provided in *36 CFR 2.52*, or in *36 CFR 7.96(k)*.

The NPS places significant restrictions on the sale of items in connection with a special event. The sale of food is allowed only when the sale: (1) does not conflict with the activities of an NPS concession, (2) is managed under a permit, and (3) is conducted in compliance with Director's Order #83: Public Health. The sale of T-shirts, clothing, arts and crafts, and any other merchandise in connection with a special event or a First Amendment activity is prohibited.

**13.4 Fireworks Display.** Fireworks displays are not permitted in natural parks. In other parks, such displays must be approved by the superintendent, following consultation with the Regional Safety Officer.

## 14. FILMING AND PHOTOGRAPHY

As with any other request for a special park use, filming and photography activities may be permitted only when they meet the criteria listed in section 3.1. If those criteria are met, then the following policies and procedures apply.

**14.1 Permits Requirements.** The Special Use Permit (Form 10-114) is the instrument used to authorize filming or photography in NPS areas.

A permit is required for any filming or photography that:

- involves the use of a model, set, or prop; or
- requires entry into a closed area; or
- requires access to the park before or after normal working hours.

A permit is not required for:

- A visitor using a camera and/or a recording device for his/her own personal use and within normal visitation areas and hours; or
- A commercial photographer not using a prop, model, or set, and staying within normal visitation areas and hours; or
- Press coverage of breaking news. This never requires a permit, but is subject to the imposition of restrictions and conditions necessary to protect park resources and public health and safety, and to prevent impairment or derogation of park resources or values.

### 14.2 Other Considerations

- A superintendent will not sign a location release supplied by an applicant.
- A superintendent may request a credit line, provided that the content or subject matter of the filming project would not reflect adversely on the National Park Service.
- The NPS may actively assist filming and photography activities that promote public understanding and appreciation of the National Park System, and the Director may authorize use of the arrowhead symbol for such filming projects.
- The NPS will not censor the content of any filming project, nor require finished film products for review, files, or documentation purposes. However, a superintendent may review a story board or other material offered by the applicant to help determine whether:
  - A credit line would be appropriate; or
  - It would be appropriate for the NPS to actively assist a filming activity or authorize use of the arrowhead symbol.

*(See Reference Manual 53 for more details.)*

## 15. EXPIRED RESERVATIONS OF USE AND OCCUPANCY

Generally, the NPS, when it purchases properties, will remove any encumbering structures and restore the sites for park purposes. Superintendents may not extend use and occupancy reservations. However, they may either: (1) issue a lease (see Director's Order #38: Property Leasing), or (2) issue a SUP for temporary residency in an NPS structure at market rental rate, provided a determination has been made that:

- It is in the best interest of the park and the United States; and
- The use will not result in impairment or derogation of resources, values, and purposes for which the park was established; and
- One or more of the following criteria are met:
  - Specific legislative authority exists to allow temporary residency;
  - The NPS is unable to remove the structure for a significant period of time;
  - The structure has or may have historic significance that would be endangered if it were vacated;
  - Extreme environmental conditions temporarily prevent the occupant from vacating the structure; or
  - Termination of residency would create an undue hardship on the occupant and the structure has served as the occupant's primary residence.

The permittee will reimburse the park for all costs associated with issuing and managing the permit, and will be charged a fee for the use of the facility, resource, or property based upon comparable prices in the local market (fair market value). The SUP does not grant any interest in the land. *(See Reference Manual 53, Appendix 14.)*

## 16. SPECIAL CONSIDERATIONS FOR NPS UNITS IN ALASKA

**16.1 General.** NPS Special Park Use policies are generally applicable to national park units in Alaska. However, in addition to the statutory authorities, regulations, cost recovery and policy directives discussed in this Director's Order and Reference Manual 53, superintendents must be

familiar with the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and its implementing regulations. They must also be aware that, in addition to compliance with applicable laws such as NEPA and NHPA, any action to permit the use of public land will require an evaluation of the effect on subsistence uses that are authorized by section 810 of ANILCA.

**16.2 Transportation or Utility Systems.** Title XI of ANILCA requires a specific process for application, review, and approval of any transportation or utility system (TUS) in Alaska national park units. Approval of a TUS requires an existing statutory authority (just as it does elsewhere in the National Park System). If there is no existing authority, new legislation will be necessary if the requested use is to be authorized.

**16.3 Access to In-holdings.** Section 1110(b) of ANILCA requires the Secretary to give in-holders such rights as may be necessary to assure adequate and feasible access for economic and other purposes, subject to reasonable regulation to protect the natural and other values of Alaska national park units. Section 1110(b) is an authority for granting access to in-holdings in Alaska units. Under Department of the Interior regulations (*43 CFR 36.10*), in-holders must apply for a right-of-way permit using Standard Form-299 or a mining plan of operation in order to receive access rights.

**16.4 Special Access.** Section 1110(a) of ANILCA authorizes the use of snow machines (during periods of adequate snow cover or frozen river conditions), motorboats, airplanes, and non-motorized surface transportation methods for traditional activities (where such activities are permitted by law), and for travel to and from villages and home sites.

**16.5 Temporary Access.** Section 1111 of ANILCA authorizes temporary access across Alaska national park units if necessary for survey, geophysical, exploratory, or other temporary use of non-Federal land, and if such access would not result in permanent harm to unit resources.

**16.6 Special Considerations.** NPS managers in Alaska must be familiar with *43 CFR Part 36*, *36 CFR Part 13*, and all applicable titles of ANILCA. Alaska-specific law and regulations must be carefully considered before applying the Special Park Uses Handbook in Alaska.

## 17. SCIENTIFIC RESEARCH AND RELATED COLLECTING

**17.1 Natural and Social Science Research and Related Collecting.** Natural and social science research and related collecting activities in parks do not fall within the definition of "special park uses" and therefore are not governed by special use permits. Instead, these activities are governed by Scientific Research and Collecting Permits. For information about permitting natural and social science research and related collecting activities in parks, please refer to Director's Order 24: NPS Museum Collections Management; and Natural Resources Reference Manual 77; Director's Order 74: Scientific Research and Collecting; and Director's Order 78: Social Science (note: some of these documents may not be completed as of this date). Additional guidance may be obtained from regional science advisors or from the Associate Director, Natural Resource Stewardship and Science.

**17.2 Archeological Research in NPS Areas**. Research must be conducted in accordance with the terms and conditions of a Federal Archeological Permit, Form DI-1991. Any archeological research conducted on park lands must be consistent with applicable statutes, regulations, policies, standards, and guidelines.

Permits issued to non-NPS researchers for archeological research on park lands must comply with regulations contained in 43 CFR Parts 3 and 7.

--------*End of Director's Order*------

# INTRODUCTION

An important and continuing responsibility in the management of National Park Service areas is the consideration and the proper accommodation, or rejection, of requests for permission to engage in special activities within a park area. These requests can come from various persons, organizations, or agencies, and involve activities that are not otherwise available to other park users. These special park uses can involve both rights and privileges, and may or may not support the purposes for which the park was established. Each of these requests, regardless of the magnitude and duration, must be carefully analyzed and thoughtfully considered. If found to be legal and appropriate, necessary and/or acceptable, the special park use may be allowed through the issuance of the appropriate permitting instrument. In each case, whether the request is approved or denied, the decision must be clear and the park manager must be able to withstand review, challenge and litigation. The judicial standard of review is whether the decision is "arbitrary and capricious." An adequate administrative record must, therefore, be developed (See Chapters 5 and 8).

This Reference Manual will not answer all questions that might arise in the management of special park uses, and is not intended to supplant the important and sometimes difficult decision-making responsibility of a park manager. It is also not intended to provide a complete list of options or authorizations that may be available to park managers. Its purpose is to assist park managers in their analysis and consideration of special park use requests by providing:

- A rational process for considering new proposals and for reviewing previously approved special park uses that are subject to renewal;

- A source of reference to legislation, Presidential Proclamations, Executive Orders, treaties, regulations, policies, directives and Director's Orders, informational guidance and instructional memoranda that address a broad array of special park use activities that a manager could encounter; and

- Information that would be helpful in considering, and subsequently denying, modifying and/or properly documenting special park use proposals.

This Reference Manual is structured to provide quick reference as well as in-depth coverage on this subject, and may be used in several ways. When used for orientation and training, the Manual should be read from front to back. Information for considering simple and recurring requests can be found through use of the table of contents, and the proper appendix. Difficult and unusual requests can be thoroughly analyzed by "tracking" them through the flow charts in Chapter 8. However, on every occasion and with each proposed use, special park use requests should be "tested" against the

relevant questions and principles in Chapters 5 and 8 to ensure a comprehensive analysis and to be certain, in the event that the use will be allowed, that necessary safeguards are put in place.

When this Manual is used to search for information on a specific subject, the user is advised to consult the Table of Contents first. A great deal of effort has been made to expand this material for the specific purpose of locating subjects. **The user is warned, however, that the material in the Appendices in this Reference Manual assumes knowledge of the policies and procedures found in the initial Chapters. This is especially true for Chapter 5 Policy Guidance, and Chapter 10 Management of Permit Fees.**

## DEFINITION OF TERMS

Administrative Record - A park generated file containing all documents detailing the decision process that results in approval or disapproval of a special park use. It starts with a request for the use of park lands, waters or facilities and ends with a copy of the executed permitting document or the denial of the request.

Appropriate Park Use - An activity that is consistent with the purposes and values for which the park was established.

Authority - An Authority, when used to approve special park uses, means a law found in the United States Code, such as 16 U.S.C. 1. A regulation (such as 36 CFR) may also be quoted, but may not be used in lieu of the U.S.C. Authority.

Authorized - An activity which is allowed by the Constitution, treaty, legislation, Presidential Proclamation, Executive Order, regulation, or valid property right (A thorough reading of Chapter 3 is essential).

Authorized (Permissible) Park Use - An activity which is proposed for, or exists in a National Park Service area that is neither mandated nor prohibited, but for which there is legal authority.

Fair Market Value - For the purposes of this handbook, the fair market value of a special park use is the value of the lands or facilities used as well as the NPS costs incurred in managing, facilitating or supporting the use, and finally the cleanup and restoration of the land or facility after the use.

Mandated Park Use - An activity which is authorized and required by the Constitution, treaty, legislation, Presidential Proclamation, Executive Order or valid property right.

National Park System - (Park Area) means any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.

Park Area - See the definition for National Park System in this section.

Permit - A written authorization to engage in uses or activities that are otherwise prohibited, restricted or regulated.

Special Park Use - A short term (not to exceed 5 years) activity that: provides a benefit to an individual, group or organization rather than the public at large; requires written authorization and some degree of management control from the NPS in order to protect park resources and the public interest; is not prohibited by law or regulation; is neither initiated, sponsored nor conducted by the NPS; does not include any activity managed under the Concessions Policy Act, the National Historic Preservation Act, or the National Park Omnibus Act; or any recreation use covered by section 4 of the LWCFA or the Recreation Demonstration Act.

## NATIONAL PARK SERVICE AUTHORITIES

The National Park System is defined to include all areas administered by the Director through the National Park Service (16 U.S.C. § 1a-1). This System is composed of parks, monuments, seashores, lakeshores, recreation areas, historic sites, preserves, museums, and various miscellaneous areas. Prior to reviewing authorizations that may apply to any particular area, one should not assume anything about its applicable authorizations based solely upon the title of the area. Nothing should be assumed about applicable authorizations based solely upon the fact that the area is a recreation area or a seashore, for example, beyond that it is a unit of the National Park System to which all National Park Service general authorizations apply.

A special park use occurring within the boundaries of a unit of the System need not necessarily be specifically prohibited by statute to be unauthorized. **There must be specific authority in the law to allow the type of special park use requested.** This authority may be either statutory or one established through a court decision. (There are also certain uses provided for by an established right, such as under the United States Constitution, a treaty, or some other legal entitlement, such as a property right (easement). For a discussion of rights and privileges, see Appendix 1.

"Statutory authorization" is defined as a law enacted by Congress. It does not mean a permitting instrument or other document used by the National Park Service to give permission for certain uses to occur within units of the National Park System. There are two basic types of statutory authorizations that apply to the National Park Service: general authorizations, which apply systemwide to all National Park Service units, and statutory provisions limited to specific park units.

An example of a general authorization which applies systemwide is the Act of August 25, 1916, frequently referred to as the National Park Service Organic Act, which authorizes activities to "promote and regulate the use of the Federal areas known as national parks, monuments, and reservations...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 wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them *unimpaired* for the enjoyment of future generations." ( 16 U.S.C. § 1) The Organic Act, then, authorizes a broad range of uses when those activities conform to the fundamental purpose for which a unit of the National Park System is established.

Activities which may not clearly fall within this general authorization are addressed in the 1978 amendment to the General Authorities Act of 1970:

> *The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." 16 U.S.C. § 1a-1.*

The statutory authorizations referred to in this provision include both systemwide and park specific provisions. Some additional examples of systemwide authorizations are spelled out in other sections of the Organic Act and statues supplemental to it, and relate to activities conducted solely for NPS purposes, such as the authority to promulgate regulations for the use and management of the units of the National Park System. See, for example, 16 U.S.C. § 3.

Other examples of systemwide authorizations are for activities that do not relate directly to National Park Service purposes or uses, but to "special use" of the parks. Examples of systemwide authorizations for special park uses are the right-of-way authorizations found in 16 U.S.C. §§ 5 and 79. These cited authorizations allow for the construction of certain kinds of specified rights-of-way in units of the National Park System (except for those areas that have been designated as a part of the National Wilderness Preservation System). It may be argued that an electrical transmission line crossing a unit of the National Park System, but serving no purpose in the administration of that unit, would be in derogation of the values for which that park unit was established. However, Congress has specifically authorized that activity in sections 5 and 79 of title 16 of the United States Code. It should be noted, however, that this authorization for an electrical transmission line does not require that the right-of-way be issued upon application. It merely provides the National Park Service with the authority to issue the right-of-way "only upon the approval of the chief officer of the Department under whose supervision or control" such area falls, "and upon a finding by him that the same is not incompatible with the public interest." (16 U.S.C. § 5)

The second basic type of authorization are those provisions which apply only to a specific park unit or units. These provisions are frequently found within the enabling legislation for a particular unit of the System. This means that in addition to the guidance provided by the Organic Act, the statutory authorization applying to a particular unit of the System further identifies the purposes and management objectives for the unit. Activities such as public recreation, hunting and other visitor uses, as well as the natural or historic resources to be preserved and protected, are usually set forth by Congress in the act establishing a particular area. In addition, Congress may recognize the special uniqueness of a particular area. A linear park, such as the Blue Ridge Parkway, serves as an example. Section 460a-3 of title 16 the United States Code, relating to the Blue Ridge Parkway, provides:

> *"In the administration of the Blue Ridge Parkway, the Secretary of the Interior may issue revocable licenses or permits for rights-of-way over, across, and upon parkway lands, or for the use of parkway lands by owners or lessees of adjacent lands, for such purposes and under such nondiscriminatory terms, regulations, and conditions as he may determine to be not inconsistent with the use of such lands for parkway purposes." (16 U.S.C. § 460a-3)*

In addition to these two basic types of statutory authorizations, it should be noted that there are a few specific statutory prohibitions of activities which occur in units of the system. A specific prohibition clarifies that the activity is not authorized by any general systemwide or park-specific authorization. An example is found in *16 U.S.C. § 60* , relating to Yosemite and Sequoia National Parks.

> *"All hunting or the killing, wounding, or capturing at any time of any wild bird or animal, except dangerous animals, when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited within the limits of said parks; nor shall any fish be taken out of any of the waters of the said parks, or any one of them, in any other way than by hook and line, and then only at such seasons and such times and manner as may be directed by the Secretary of the Interior." (16 U.S.C. §60)*

In addition to the statutory provisions referred to above, there are other factors which must be considered in determining whether a proposed activity or special park use is authorized. These include executive orders, which are issued by the President; regulations, issued by the executive agencies; and the decisions of the courts; all of which are based upon statutory provision and/or the United States Constitution. It is likely that most National Park Service employees are familiar with regulations, which for units of the National Park System are mainly found in Title 36 of the Code of Federal Regulations (36 CFR). In addition, regulations related to the Department of the Interior are found in Title 43 of the Code of Federal Regulations. These regulations provide administrative interpretations of statutory provisions, or administrative procedures by which the government does business.

Permits for special uses have a long history in the Executive Branch. Numerous opinions of the Attorney General have declared such permits valid, even though they permit uses of government land not specifically authorized by Congress. Through decisions of the courts, and opinions of the Attorney General and the Comptroller General, certain guidelines have evolved on the appropriate use of permits for special uses. In summary, these guidelines provide that the Secretary may in his/her discretion, issue permits for special uses under certain conditions. The following restrictions apply to the issuance of such permits: (1) the permit must be revocable; (2) the use authorized must be temporary and for lands and facilities temporarily not needed for park purposes; (3) the permitted use cannot violate or circumvent any relevant statute; and (4) the activity may not be one in derogation of the values and purposes for which the park unit was established or the National Park System administered. Revocation (or suspension) of a permit may be based on violation of any of the conditions of the permit or applicable regulations or statute affecting the use.

Exhibit 1 to this Chapter is a listing and brief description of various authorities that have been used in some parks. They are included here as a convenience for those parks searching for an authority to quote for a specific use.

References

*16 U.S.C. § 1*
*16 U.S.C. § 1a-1*
*16 U.S.C. § 3*
*16 U.S.C. § 5*
*16 U.S.C. § 60*
*16 U.S.C. § 79*
*16 U.S.C. § 460a-3*
*28 U.S.C. § 2671*
*NPS MANAGEMENT POLICIES, 1988*

## AUTHORITIES

The following list of authorities have been researched for various uses throughout the Service. They are listed here as a convenience for those parks looking for an authority to quote for a specific use.

16 U.S.C. § 460l [460"L"] - Outdoor Recreation Coordination

> WHEREAS, pursuant to 16 U.S.C. § 460 L, The Congress finds and declares that it is desirable for all levels of government and private interests to take prompt and coordinated action to the extent practicable to conserve, develop, and utilize such resources for the benefit and enjoyment of the American people; and

16 U.S.C. § 1a-1 1978 PUBLIC LAW 95-250 Reciprocal EMS Agreements

WHEREAS, 16 U.S.C. § 1A-1 as amended by 1978 Public Law 95-250 provides for the promotion and regulation of the various areas of the National Park System so that the authorization of activities be construed and the protection, management, and administration of these areas be conducted in the light of the high public value and integrity of the National Park System; and

Also:

WHEREAS, 16 U.S.C. § 1b(1) authorizes the Secretary of the Interior to render emergency rescue, fire fighting, and cooperative assistance to nearby law enforcement and fire prevention agencies and for related purposes outside of the National Park System.

42 U.S.C. § 1856a Reciprocal Fire Agreements

WHEREAS, 42 U.S.C. § 1856a authorizes reciprocal agreements for mutual aid for fire protection with agencies maintaining fire protection facilities in the vicinity of Service property and for other property for which said agency normally provides fire protection; and

See also 16 U.S.C. § 1b(1) above.

See also 16 U.S.C. § 1b(2) dealing with the erection and maintenance of fire protection facilities, etc. adjacent to any area of the said National Park System, where necessary, to provide service in such area.

16 U.S.C. § 1b(1) Reciprocal Law Enforcement Agreements

WHEREAS, 16 U.S.C. § 1b(1) authorizes the National Park Service to render emergency cooperative assistance to nearby law enforcement agencies outside of the National Park System

See also 16 U.S.C. § 1a-6(a)

Note that the above two statues cite Federal authority for NPS law enforcement personnel to act outside Service property, and designates and defines the powers of the same personnel as law enforcement officers. The authority for non-service law enforcement officials to enter onto and act within Service property is usually contained in state statues. These state statues must be quoted in any Service law enforcement reciprocal agreement. In addition, if the state has a statue relating to Federal officers acting on state property, that should be cited as well.

AUTHORITIES FOR OTHER FEDERAL AGENCIES

28 U.S.C. § 2671 - FEDERAL TORT CLAIMS ACT For use in place of the Hold Harmless clause in agreements when dealing with other Federal Agencies.

The (agency) agrees to be responsible for administration and/or payment of any and all claims for property damage or personal injuries which may arise out of the activities authorized by this Agreement in accordance with the provisions of the Federal Tort Claims Act.

39 U.S.C. § 411 - Post Office Dept. Coop. with other Agencies

WHEREAS, Executive agencies are authorized to furnish property, both real and personal, and personal and non-personal services to the Postal Service, and the Postal Service is authorized to furnish property and services to them.

AUTHORITIES FOR MILITARY (NAVY)

WHEREAS, Executive Order No. 8972, issued December 12, 1941 and published in the Federal Register of December 16, 1941 (6 F.R. 6420), as amended and supplemented by Executive Order No. 9074, issued February 25, 1942, and published in the Federal Register of February 28, 1942 (7 F.R. 1587), gives the Secretary of the Navy full authority to establish patrols and to take all over measures necessary to protect Navy shore establishments throughout the United States; and

WHEREAS, Executive Order No. 8972 as amended and supplemented by Executive Order No. 9074 further states that all Government agencies are required to assist and support the Secretary of the Navy so far as their facilities and personnel will permit; and

COAST GUARD

WHEREAS, 14 U.S.C. § 141(b) authorizes the Coast Guard, with the consent of the head of the agency concerned, to avail itself of such facilities of any Federal agency as may be helpful in the performance of its duties; and

**THE FOLLOWING LIST OF GENERAL AUTHORITIES MAY BE USED DEPENDING ON THE CIRCUMSTANCES.**

16 U.S.C. § 432 - Antiquities Act

WHEREAS, 16 U.S.C. § 432 permits the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under the Secretary of the Interior to institutions properly qualified to conduct such examination, excavation, or gathering subject to such rules and regulations as may be prescribed; and

16 U.S.C. § 462(e) - Cooperative Agreements for Historic Sites

WHEREAS, 16 U.S.C. § 462(e) permits the Secretary of the Interior to contract and make cooperative agreements with States, municipal subdivisions, corporations, associations, or individuals, with proper bond where deemed advisable, to protect, preserve, maintain, or operate any historic or archaeological building, site, object, or property used in connection therewith for public use.

16 U.S.C. § 464(a) - Coop. Agreements. for Historic Sites contd.

WHEREAS, 16 U.S.C. § 464(a) authorizes the Secretary of the Interior to cooperate with and seek and accept the assistance of any Federal, State, or municipal department or agency, or any educational or scientific institution, or any patriotic association or any individual in preserving for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States.

16 U.S.C. § 470 - National Historic Preservation Act

The Comprehensive Environmental Response, Compensation, and Liability Act - CIRCLA

42 U.S.C. § 9620(a)(1) - Applicability of law to Feds

WHEREAS, all guidelines, rules regulations and criteria which are applicable to preliminary assessments and carried out under this Act for facilities at which hazardous substances are located, shall also be applicable to facilities which are owned or operated by a department of the United States.

16 U.S.C. § 9620(f) - State and local participation

WHEREAS, 42 U.S.C. § 9620(f) affords to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans.

16 U.S.C. § 1a-2(g) Exhibits and demonstrations; sales of products and services; contracts and cooperative arrangements; credits to appropriation

16 U.S.C. § 1b(5) - Supplies and rental of equipment

16 U.S.C. § 3 - Sales, leases and permits

16 U.S.C. § 3, § 9(a) - Rules, Regulations, Fines

16 U.S.C. § 6a - Gifts and Donations of money and real property

16 U.S.C. § 7a-e - Airports

16 U.S.C. § 12 - Aid to Visitors

16 U.S.C. § 13 - Medical Attention to Employees

16 U.S.C. § 17c - Procurement of supplies and special services to permittees and licensees in emergencies

16 U.S.C. § 20 - Concessions Permit

16 U.S.C. § 4601-1 - Public Recreation Research and Technical Assistance

16 U.S.C. § 4601-6a - Admission and Special Recreation Fees

16 U.S.C. § 462(e) - Cooperative Agreements to preserve, maintain or operate historic site on property

16 U.S.C. § 462(k) - General authority regarding historic preservation

16 U.S.C. § 464 - Cooperation with governmental and private parties re: historic sites

16 U.S.C. § 470h-3 - Lease of Historic Property

16 U.S.C. § 670c - Public outdoor recreation resources

40 U.S.C. § 345c - Widening of roads. General authority for Federal agencies to transfer such interest in property for road widening as will not be adverse to the interest of the United States, and only when such property transfer could not be conducted under title 23.

## IMPAIRMENT AND DEROGATION OF PARK VALUES AND PURPOSES

Refer to NATIONAL PARK SERVICE AUTHORITIES, Chapter 3, for background.

Determining activities which may be authorized is controlled by the following statutory provisions, limiting activities occurring within the National Park System:

> "... which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (16 U.S.C. §1)
>
> "The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." (16 U.S.C. §1a-1)

These statutory provisions place affirmative obligations on the National Park Service to exercise its authority in a manner that will protect against the impairment or derogation of a park's scenery and its natural and historic objects and wildlife (i.e. park resources), values and purposes, and require that all NPS regulatory and management decisions be consistent with this mandate. The resources, values, and purposes referred to are those which are identified in the Organic Act and in the enabling legislation establishing a particular area, as well as any other legislation (such as the Wilderness Act) that may apply to a particular area. The various management and planning documents for an area are usually the most helpful source for learning about a park's resources, values and purposes.

A decision about whether a proposed activity would "impair" park resources, or be in "derogation of the values and purposes" for which an area was established, requires an exercise of administrative judgment by park managers. NPS managers must always seek ways to avoid, or to minimize to the greatest degree practicable, adverse impacts on park resources and values. Managers must conduct and consider environmental assessments or environmental impact statements; consider relevant results of scientific studies of the park resources that could be affected; and, when appropriate, seek and consider public comments. In all instances, National Environmental Policy compliance documents must identify the impacts of proposed activities, and whether the activities might impair, or be in derogation of, the resources, values and purposes for which an area was established.

Before approving a park use, managers must consider the impacts of the proposed use and determine, in writing, that the activity will not lead to an adverse impact that interferes with the integrity of the park's resources or values, or with the opportunities that otherwise would exist for the enjoyment of them by the present or a future generation. In many instances, whether a proposed

activity may impair or cause derogation may be obvious to park administrators. At other times, it may not be so obvious. The factors that must be considered are:

- Whether the park resources and values that would be affected have been specifically identified for protection in the park's enabling legislation, or whose conservation has been emphasized in the parks' general management plan or other planning documents.
- The extent of the impact, including both direct and indirect impacts.
- The duration of the impact.
- The timing of the impact. And,
- The cumulative effect of the impact and other, prior impacts on park resources and values.

If it is determined that a particular activity would result in the impairment or derogation of park resources, values or purposes, the activity must not be permitted unless the activity has been directly and specifically authorized by law. If this authorization exists, it is normally found in the park enabling legislation.

In addition to the requirements of the Organic Act and the General Authorities Act, the Clean Air Act Amendments of 1977 give the Department of the Interior and the National Park Service the affirmative responsibility to protect the air quality related values (i.e., all those scenic, cultural, biological, and recreation resources of an area that are affected by air quality) of certain lands it manages and to prevent adverse impacts from new sources of air pollution. **(**42 U.S.C. §7475**)**. It follows that NPS regulatory and management decisions must be consistent with maintaining these air quality related values, as well.

References

Chapter 1, NPS Management Policies
16 U.S.C. §1
16 U.S.C. §1a-1
16 U.S.C. §1131
42 U.S.C. §7475

## POLICY GUIDANCE

A special park use is a short term activity that takes place in a park area and that:

- Provides a benefit to an individual, group or organization rather than the public at large;
- requires written authorization and some degree of management control from the NPS in order to protect park resources and the public interest;
- is not prohibited by law or regulation; and
- is neither initiated, sponsored nor conducted by the NPS.

A special park use does not include any activity managed under the Concessions Management Improvement Act of 1988 (16 U.S.C. 590l), any recreation use covered by section 4 of the Land and Water Conservation Fund Act (16 U.S.C. 460l-6a), any recreation use covered by the Recreation Fee Demonstration Program (16 U.S.C.460l-6a Note), any leasing authority pursuant to the National Historic Preservation Act (16 U.S.C. 470h-3), or Section 802 of the National Parks Omnibus Management Act of 1998 (16 U.S.C. 1a-2(k)).

It is the policy of the National Park Service to allow special park uses that will not:

- cause injury or damage to park resources; or
- be contrary to the purposes for which the park was established; or
- unreasonably impair the atmosphere or peace and tranquility maintained in wilderness, natural, historic or commemorative locations within the park; or
- unreasonably interfere with the interpretive visitor service or other program activities, or with the administrative activities of the NPS; or
- substantially impair the operation of public facilities or services of NPS concessionaires or contractors; or
- present a clear and present danger to public health and safety; or
- result in significant conflict with other existing uses.

Special park uses are authorized for a period not to exceed 5 years, with the exception of rights-of-ways that are covered under separate statutory authority and may exceed five years. Existing activities that do not meet these criteria should be phased out. In all instances, **there must be specific authority in the law to allow the type of special park use requested.**

The NPS will charge a fee and recover costs for special park use permits unless prohibited by law or Executive order, or when the proposed use is protected by the First Amendment or involves another right and not a privilege. Charges should reflect the fair market value of the benefit provided the permittee. The fair market value of a special park use is the value of the lands or facilities used, as well as the NPS costs incurred in managing, facilitating or supporting the use. The NPS will retain funds recovered for the cost incurred in managing a special park use. Charges for the value of the benefits received by the permittee arising from the use of NPS lands and facilities must be deposited

in the U. S. Treasury unless otherwise specifically authorized by law. Exemptions from special use permitting charges are discussed in Chapter 10.

Absent specific authority to waive a recreation fee, superintendents must charge special use permit holders applicable entrance, recreational use, or special recreation permit fees. Non-recreation uses are exempted from this requirement. Examples of these exempted uses include but are not limited to: First Amendment, utility rights-of-way, agricultural, grazing, commercial filming, and scientific or educational activities. See Chapter 10 for further discussion.

The NPS has the authority to accept donations, but not to solicit donations. Therefore, NPS managers **will not** initiate discussion of a possible donation with any permit applicant. In addition, the applicant must not be approached by a representative of a cooperating association, friends group or other park partner for a donation while the application is being considered, the permit is being negotiated or the permitted activities are ongoing.

An applicant's offer of a donation to the park must not in any way influence the NPS manager's decision to issue or deny a permit, nor can it be allowed to influence the manner in which a permit is administered. If a permit applicant voluntarily indicates an interest in making a donation to the park, the NPS will refrain from discussing the donation until after the permitted activity is completed. This will help to ensure that the prospect of a donation does not cause a lapse in objectivity and thereby create an ethical dilemma. **Superintendents may not accept donations in lieu of cost recovery or permit fees.**

Park managers must develop an appropriate administrative record to support their decisions. The information should be in writing and, in accordance with the sensitivity of the matter, contain as a minimum, the dates, discussions and rationale involved in the decision process and the determination of all fees. If the appropriateness of a special park use has been determined in an officially approved park planning document (such as a GMP or RMP), reference to that plan should also be made. In addition, the administrative record should contain all letters, compliance documentation, notes and other documents related to the issuance of the permit, including a copy of the executed permit. The Justice Department has recently issued guidance to Federal agencies on compiling Administrative Records. While this guidance is somewhat involved, it does thoroughly describe what should and should not appear in an Administrative Record and why. It is attached to this Chapter as Exhibit 1 for your information.

Each request for a special park use must be individually considered. A request for a renewal should be considered as carefully as if it were an initial application. The review should take place before the existing permit expires, and must ascertain the continuing validity of the original findings as well as the Administrative Record of what has taken place since those findings. The review will determine whether the activity is still mandated or legally permissible, and whether it continues to be appropriate and compatible with the purposes of the park. Superintendents will establish conditions

that protect NPS and public interests, and ensure the absence of impairment or derogation of the park resources, values and purposes for which the park was established.

Some special park uses are specifically authorized in a park area's enabling legislation. Permitting is either mandatory, ("The Secretary shall permit ..."), or discretionary, ("The Secretary may permit ...") In either instance, such activities are considered to be both authorized and appropriate as long as adequate safeguards are established to protect park resources, values, and visitors. In the first instance, however, the activity must be permitted; in the second, permitting of the activity is discretionary, depending upon the park manager's assessment of its impact. Park managers may find that certain special park uses have been individually addressed in legislation. When this is the case, and an activity has been specifically prohibited, any request to engage in the activity must be denied. (A flow chart illustrating these points can be found in Chapter 8.)

Special park uses that are neither specifically prohibited nor mandated can be separated into rights that are related to property ownership, legislative or treaty entitlement, or Constitutional guarantees; and privileges over which the park manager may exercise varying degrees of discretion and control (See Appendix 1). Generally speaking, citizens must be afforded the opportunity to exercise their rights; however, a park manager may establish certain conditions to protect park visitors, park resources and values. Information concerning specific types of rights can be found in various appendices of this guideline. Specific questions concerning proposed activities should be referred to the appropriate program Coordinators and Solicitors Office.

The park area's administrative and legislative histories may provide specific guidance or information concerning special park uses that are privileges. Park managers will need to apply the criteria in the referenced appendices of this guideline, satisfactorily answer the questions and apply the tests found in Chapter 8, and document their conclusions in an administrative record before determining whether the request should be granted or denied.

Special park uses that are appropriate within one park area may be inappropriate in another because of differences in park purpose or resources, in program needs, or in various constraints set forth in their respective enabling legislation. Further, special park uses that are appropriate in one management zone within a single park may not be appropriate in designated wilderness areas, historic zones or other management zones in the same park. Certain special park uses could be appropriate in only one season of the year, on only one or more days of the week, or only during certain hours of the day. Once a use has been allowed to occur, however, the precedent has been established and subsequent requests for the same use cannot be denied unless such additional use would fail to satisfy the criteria of 36 CFR 2.5(a).

**Park managers should be aware that local decisions related to permitting special park uses may have Servicewide implications.** If a determination is made that a special park use has such potential, then the park manager should consult with appropriate program coordinators or the Solicitors Office before committing to a decision regarding the issuance of a permit.

Special Use Permits contains permittees' names, addresses and in some instances, social security numbers and/or tax ID numbers. Permits stored in parks will be maintained in lockable metal file cabinets or unlocked cabinets in secured rooms or buildings on either United States Government-owned or leased facilities. Computer files storing similar files will be password protected to restrict unauthorized access.

Parks will comply with established records disposition schedules to determine minimum length of storage requirements for all permits. Special Use Permits generally adhere to two rules:

- Special use permits issued without fees or cost recovery, along with associated documents, must be retained in park files for one year and one day. This requirement arises from the Records Disposition Schedule;
- Special use permits issued with fees and/or cost recovery involved, and associated documents, must be retained in park files for six years and three months. This requirement arises from 31 U.S.C. 3702 and the NARA issued General Records Schedule.

Park managers may, at their discretion, retain permit files for longer periods, but these are the minimums.

**U.S. Department of Justice**
Environment and Natural Resources Division
Dated: January 1999
Guidance to Federal Agencies on Compiling The Administrative Record

Introduction

Under the Administrative Procedure Act (APA), a court reviews an agency's action to determine if it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U. S.C. § 706(2) (A). In making this determination, a court evaluates the agency's whole administrative record. The administrative record is the paper trail that documents the agency's decision-making process and the basis for the agency's decision.

The APA governs judicial review of a challenged agency decision. However, several statutes specify what documents and materials constitute an administrative record, eg., 42 U.S.C. § 607(d)(7)(A)(provision states what materials will constitute the record for the purpose of judicial review of certain enumerated types of rulemaking issued under the Clean Air Act); 42 U:S.C. § 96130) and (k) (CERCLA). At the outset, be sure to determine whether a statute other than the APA applies- in the case. In addition, regulations may govern how to assemble a record. See, e.g., 40 C.F.R. 300.800 -300.825 (CERCLA); 40 C.F.R. Part 24 (RCRA Corrective Action). See also FRAP Rules 16 and 17 (record on review or enforcement and filing of the record).

The purpose of this memorandum is to provide guidance to agencies in compiling the administrative record of agency decisions other than a formal rulemaking or an administrative adjudication. Optimally, an agency will compile the administrative record as documents and materials are generated or received in the course of the agency decision-making process. The record may be a contemporaneous record of the action. However, the administrative record may be compiled by the agency after litigation has been initiated. An agency employee should be designated to be responsible for compiling the administrative record. That individual will be responsible for certifying the administrative record to the court. S/he may keep a record of where s/he searched for the documents and materials and who was consulted in the process of compiling the administrative record.

It is critical for the agency to take great care in compiling a complete administrative record. If the agency fails to compile the whole administrative record, it may significantly impact our ability to defend and the court's ability to review a challenged agency decision.

1. General Principles for Compiling the Administrative Record

The administrative record consists of all documents and materials directly or indirectly considered by the agency decision maker in making the challenged decision. It is not limited to documents and materials relevant only to the merits of the agency's decision. It includes documents and materials relevant to the process of making the agency's decision.

- Include documents and materials whether they support or do not support the final agency decision.

- Include documents and materials which were before or available to the decision-making office at the time the decision was made.

- Include documents and materials that were considered by or relied upon by the agency.

- Include documents and materials that were before the agency at the time of the challenged decision, even if they were not specifically considered by the final agency decision-maker.

- Include privileged and non-privileged documents and materials. (See section 4).

2. Where To Find The Documents and Materials That Comprise The Administrative Record

The agency should identify an agency employee to be responsible for compiling the administrative record. The identified agency person should be responsible, careful, and prepared to provide an affidavit. S/he should keep a record of where s/he searched for documents and who was consulted in the process. S/he should conduct a thorough search for the purpose of compiling the whole record, including the following:

- Contact all agency people, including program personnel and attorneys, involved in the final agency action and ask them to search their files and agency files for documents and materials related to the final agency action. Include agency people in field offices.

- Contact agency units other than program personnel, such as congressional and correspondence components.

- Where personnel involved in the final agency action are no longer employed by the agency, search the archives for documents and materials related to the final agency action. A former employee may be contacted for guidance as to where to search.

- Determine whether there are agency files relating to the final agency action. If there are such files, search those files.

- If more than one agency was involved in the decision making process, the lead agency should contact the other agencies to be sure the record contains all the documents and materials that were considered or relied on by the lead agency.

- Search a public docket room to determine whether there are relevant documents or materials.

3. What Documents and Materials To Include In The Administrative Record

a) Types of materials:

- Documents that are to be included in the administrative record should not be limited to paper but should include other means of communication or ways of storing or presenting information, including e-mail, computer tapes and discs, microfilm and microfiche. See 36 C.F.R- Chapter XII, subchapter B (electronic records). The term should include data files, graphs, charts and handwritten notes. Do not include personal notes, meaning an individual's notes taken at a meeting or journals maintained by an individual, unless they are included in an agency file. An agency file is determined by agency control, possession and maintenance.

b) Kinds of Information:

- Include all documents and materials prepared, reviewed, or received by agency personnel and used by or available to the decision-maker, even though the final decision-maker did not actually review or know about the documents and materials.

- Include policies, guidelines, directives and manuals.

- Include articles and books. Be sensitive to copyright laws. governing duplication.

- Include factual information or data.

- Include communications the agency received from other agencies and from the public, and any responses to those communications. Be aware that documents concerning meetings between an agency and OMB should be included but may qualify, either partially or fully, for the deliberative process privilege.

- Include documents and materials that contain information that support or oppose the challenged agency decision.

- Exclude documents and materials that were not in existence at the time of the agency decision.

- As a general rule, do not include internal "working" drafts of documents that were or were not superseded by a more complete, edited version of the same document. Generally, include all draft documents that were circulated for comment either outside the agency or outside the author's immediate office, if changes in these documents reflect significant input into the decision-making process. Drafts, excluding "working" drafts, should be flagged for advice from the DOJ attorney or the Assistant United States Attorney (AUSA) on whether: 1) the draft was not an internal "working" draft; and 2) the draft reflects significant input into the decision-making process.

- Include technical information, sampling results, survey information, engineering reports or studies.

- Include decision documents.

- Include minutes of meetings or transcripts thereof.

- Include memorializations of telephone conversations and meetings, such as a memorandum or handwritten notes, unless they are personal notes.

4. How To- Handle Privileged Documents and 'Materials

Generally, the administrative record includes privileged documents and materials and documents and materials that contain protected information. However, once the record is compiled privileged or protected documents and materials are redacted or removed from the record.

The agency should consult. With the agency counsel and the DOJ attorney or the AUSA as to the type and the extent of the privilege(s) asserted. Be sensitive to the relevant privileges and prohibitions against disclosure, including, but not limited to, attorney-client, attorney work product, Privacy Act, deliberative or mental processes, executive, and confidential business information.

If documents and materials are determined to be privileged or protected, the index of record must identify the documents and materials, reflect that they are being withheld, and state on what basis they are being withheld.

5. How to Organize the Administrative Record

- Organize the documents and materials in a logical and accessible way.

- Organize the documents and materials in chronological order and/or by topic.
- Documents and materials that do not fit into a chronological order may be separated by category, e.g., internal policies, guidelines or manuals.

- After a DOJ attorney or an AUSA has had the opportunity to review the administrative record for completeness and organization, it may be useful to bates stamp or to number each item. A DOJ attorney or an AUSA may review the documents and materials the agency decided were not contained in the administrative record.

- Prepare an index to the administrative record.

Index should identify each document and material by the bates stamp number or document number and a brief description of the document or material, e.g., "memorandum dated June 5, 1997 from Mary Smith to EPA Administrator Jones regarding June 6, 1997 meeting agenda." If a document or material is being withheld based on a privilege or prohibition, state the privilege or prohibition.

The agency must certify the administrative record.' Certificate language should reflect how the agency person who was responsible for compiling the record has personal knowledge of the assembly of the administrative record.

Neither a DOJ attorney nor an AUSA should certify the record to avoid having them be a possible witness in the case.

- The DOJ attorney or the AUSA must consult the local rules of the court in which the matter is pending to determine how to file the administrative record with the court. If the local rules are silent on this issue, the DOJ attorney or the AUSA can address the issue with the parties and the court. For example, it may be appropriate to file only the index with the court and to provide the parties with copies of the index and the opportunity to review the record or to file the parts of the record that the parties will rely on as grounds for their motions for summary judgment. The U.S. Attorney's Office in the jurisdiction in which the matter is pending should always be consulted. 'If the agency fails to certify the record, the government may not be able to file a motion for summary judgment.

6. Important For Court To Have The Whole Administrative Record

- A court reviews the agency action based on the whole administrative record before the agency at the time the decision was made.

- The whole administrative record allows the court to determine whether the agency's decision complied with the appropriate APA standard of review.

- All agency findings and conclusion and the basis must appear in the record.

- The administrative record is the agency's evidence that its decision and its decision-making comply with relevant statutory and regulatory requirements.

- A court may remand the matter where the agency's reasoning for its decision is not contained in the administrative record.

7. Consequences of Incomplete Administrative Record

- If record is incomplete, government may be permitted to complete the record but, by doing so, you also may raise questions about the -completeness of the entire record.

- If the court decides the record is not complete, it should remand the matter to the agency. However, it may allow extra-record discovery, including depositions of agency personnel, and may allow court testimony of agency personnel.

- Generally, although it may vary from circuit to circuit, courts will allow discovery when a party has proffered sufficient evidence suggesting:

  - bad faith;

  - improprieties may have influenced the decision-maker-, or

- agency relied on substantial materials not included in the record.

A party must make a strong showing that one of these exceptions applies before a court will allow extra-record inquiry.

8. Supplementation of the record

- When the administrative record fails to explain the agency's action, effectively frustrating judicial review, the court may allow the agency to supplement the record with affidavits or testimony.
- Be aware once the government supplements with affidavits or testimony, opposing party might depose your witnesses and/or submit additional affidavits or testimony.

- Be aware if agency counsel becomes a potential witness, it may be appropriate to screen the agency counsel from participation in the litigation. ABA Model Rule of Professional Responsibility 3.7.

Conclusion

When an agency must defend a final agency action before a court, it should take great care in preparing the administrative record for that decision. It is worth the effort and may avoid unnecessary and/or unfortunate litigation issues later on.

This memorandum provides only internal Department of Justice guidance. It does not create any rights, substantive or procedural, which are enforceable at law by any party. No limitations are hereby placed on otherwise lawful prerogatives of the Department of Justice or any other federal agency.

# COMPLIANCE REQUIREMENTS

## GENERAL

The decision to issue or deny a permit for a special park use flows from a series of managerial decisions including, where applicable, the appropriate National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) compliance. Before issuing a permitting document, the park will be required to obtain approval for NEPA in all instances when the resource will be affected, and the use or activity is not covered under a categorical exclusion. Review under Section 106 of the NHPA also applies, in cases where the proposed action has the potential to affect cultural resources that are listed or eligible for listing in the National Register of Historic Places.

## INTRODUCTION

The Environmental Assessment and the 106 cultural compliance documentation may be prepared by either the park or the other party to the permit. If the park prepares either or both of these documents, the permittee will normally pay for all NPS costs associated with their preparation and submittal. This cost will be shown as part of the administrative charge. Refer to Chapter 10 for further discussion on cost recovery.

The park will need at least three copies of each of these documents. A copy of the EA is reviewed by the park natural resource manager. For 106 compliance purposes, under a 1995 Programmatic Agreement that applies Servicewide, each park has a 106 coordinator (as well as a designated set of CRM specialists who can provide review, professional services, and technical advice). If any changes need to be made, these individuals return the documents, through the SPU Coordinator, to the submitting party with appropriate comments.

When the documents are satisfactory to the park, the EA is sent to the Regional Office for review and comment. Normally the park 106 coordinator will ensure that the park's CRM 106 advisers are involved as appropriate and also that 106 documentation is provided to the State Historic Preservation Officer and the Advisory Council on Historic Preservation when required under the 106 regulations (36 CFR Part 800).

## ENVIRONMENTAL COMPLIANCE

In most cases, the initial request a park receives for a special park use does not contain enough information to base a decision on. The park must know the answer to the questions: exactly where? is there a reasonable alternative location? how wide? how deep? using what tools? what natural or cultural resources exist in the project area? and etc. An example of a form intended to gather the information needed is included here as Exhibit 1. The park should modify the information requested on this form as the need dictates.

Once the requested information comes in, the park can evaluate the situation to determine the next step. There are three possible alternatives. If the park determines that:

- it is not an authorized activity, or there is a derogation of values, or it is not compatible with the public interest, or there is a reasonable alternative path or location for the activity, the park must deny the request.
- none of the above is true and the information provided is sufficient in and of itself to determine that the use is covered by a NEPA categorical exclusion (see Exhibit 4), the park resource manager issues a memorandum to the file stating this and the special park use coordinator may go on to the next step in the process. (The park 106 coordinator and CRM advisers should be involved to determine any needs for 106 review.)
- none of the above is true, the park requires an Environmental Assessment before it can proceed.

If the first alternative is true, the park sends a letter denying the use for whichever reason applies.

The second alternative refers to the NEPA categorical exclusions found in 516 DM 6, Appendix 7, Section 7.4. and 516 DM 2, Appendix 1. There are **exceptions** to these exclusions. The exceptions deal with those actions within categorical exclusions that would affect National Register properties, wetlands, public health and safety, and other subjects. The park manager is warned to review this list prior to applying a categorical exclusion. The 1995 nationwide Programmatic Agreement for 106 compliance includes a list of programmatic exclusions that apply to 106 review if specific conditions are met.

In the last half of 1992, the Washington Solicitor and particularly the WASO Operations division started requiring more information on NEPA categorical exclusions. The end result was the development of what amounts to a check list asking for yes or no answers. The form, titled the **ENVIRONMENTAL REVIEW AND COMPLIANCE FORM**, (presented here as Exhibit 3 but without headers or footers for immediate use), has been accepted by the WASO Operations Division. Parks are encouraged to use this or a similar format every time a project might receive a categorical exclusion from NEPA compliance. The superintendent is the signing official and a copy of the form will accompany the permit as it is sent to the Regional Office, then, if necessary, the Washington office for approval. Exhibit 6 includes a model form that may be used for 106 purposes; its use is not required, and parks may adapt it to meet park needs or to improve coordination with NEPA.

If the submitted information is sufficient to prove to the park that the requested use would fall under a NEPA categorical exclusion, the park resource manager may complete a ENVIRONMENTAL REVIEW AND COMPLIANCE FORM as above for the superintendent's signature. The park will file the form in the Administrative Record and continue with the permitting process. (As noted above, the park 106 coordinator, and appropriate CRM advisers as needed, should be involved to determine any needs for 106 review.)

If the third alternative is true, the park requires an Environmental Assessment (EA) before it can continue with the permitting process. This document may be done by either the requestor or the park. While the pre-assessment information originally submitted may be used as a guide, Exhibit 2 attached to this chapter, is an example of the information the NPS normally needs for an Environmental Assessment. When further Section 106 review is also needed, the EA may also include information needed for 106 purposes. Once completed, the park and Regional Office review the EA. If the EA is satisfactory, the Regional Office or park then decides which of three tracks to follow:

- to deny the request; or
- to approve the request by signoff on a Finding of No Significant Impact (see Exhibit 5); or
- to require an Environmental Impact Statement.

Whichever decision is reached, the park receives the documentation from the Regional Office and places it into the administrative record. If the decision is to deny the request, the park so notifies the applicant, presenting the park or Regional Office justification. If the decision is made to require an EIS, the park notifies the applicant and the new document follows roughly the same track of approvals as the EA. In most cases however, the EA is approved and the park may proceed to construct the first draft of the authorizing document for the use.

The draft document will include the important operational measures from the EA as well as any restrictions or provisions indicated by the reviewing officials. An example of one such measure would be: **The permittee will erect and maintain silt screens at all points subject to erosion and sedimentation during the construction phase of the project.**

## CULTURAL COMPLIANCE

### When Section 106 Applies

Cultural Compliance refers to Section 106 of the National Historic Preservation Act and applies to any action that meets the definition of "undertaking" in the National Historic Preservation Act. The law says undertakings are projects, activities, or programs funded by, or carried out by or on behalf of, an agency, whether agency jurisdiction is direct or indirect, and including federal financial assistance, permits, licenses, and approvals. Under the regulations for the 106 process, *Protection of Historic Properties* (36 CFR Part 800), agencies may determine that an action has no potential to affect properties listed or eligible for listing in the National Register, and that concludes their 106 obligations. (The potential to affect is a separate question from whether there are actually any Register-listed or -eligible properties that would be affected.)

Some of the types of actions that trigger 106 review include:

- ground disturbance (or other actions that could affect archeological resources);
- actions that will change a historic building, ranging from some maintenance activities to rehabilitation;
- activities that could affect a cultural landscape or an ethnographic resource that meets National Register criteria, such installation of new landscape features like new plantings or fences in a cultural landscape.

Undertakings also include actions that could affect the setting of a historic property by introducing visual or audible elements out of keeping with the property's historic character. Does the proposed action have the potential to alter historic qualities or characteristics such as location, design, setting, workmanship, materials, feeling, and association? Will it change the use of the historic property? Many undertakings are actions carried out for purposes other than resources management, such as the construction of a new maintenance facility or sewer line, or use of borrow pits or dumping sites whether on or off NPS lands. Even failure to take action can result in an adverse effect under 36 CFR Part 800 when it constitutes neglect resulting in deterioration of a historic property. Transfer, sale, or lease of a historic property may have an adverse effect unless adequate preservation safeguards are included in the transaction. Indirect or less immediate effects such as increased visitor use, vandalism, and daily wear should also be considered.

**The 106 Review Process**

Two main pointers are:

- don't leave the consideration of cultural resources until the last minute; involve the park's 106 coordinator early enough so that the time needed for 106 review can be built into the project schedule; and

- use the park 106 coordinator to make sure that the park's CRM advisers are also involved to advise, review, or offer technical services as needed. Those advisers may be in the park or another park, at a Region, or even at a university.

The Advisory Council on Historic Preservation's regulations for Section 106 encourage agencies to seek ways to avoid or minimize damage to historic properties. The regulations define the process of review and consultation by which federal agencies comply with Section 106, and they emphasize participation by state historic preservation officers (SHPOs) and the public, including Native Americans. It is important to keep in mind that Section 106 does not require preservation. It does require federal agencies, before funding or licensing an undertaking, to consider the historic or prehistoric values of Register-listed or -eligible properties and give the Advisory Council on Historic Preservation a reasonable opportunity to comment.

Under the Advisory Council's regulations, agencies have several fundamental responsibilities. They need to know what historic properties exist that may be affected by the undertaking. They then

evaluate the potential effects of the action on those historic properties, consulting and considering the views of others as appropriate. If those effects will be damaging or "adverse," then the agency consults about ways to avoid or minimize the damage.

Section 106 documentation may be included within the EA, or submitted as a separate document. One format specific to the NPS and included as Exhibit 6 is the model form for "Assessment of Actions Having an Effect on Cultural Resources" (previously known as a Triple X form). As noted above, this form is not required, but may be helpful in some cases, and parks are free to revise it to suit their needs.

For special park use permits, the sequence usually starts when a prospective applicant contacts the park requesting a use that involves disturbance of the ground or other cultural resource. If the park has not surveyed the area for cultural resources, or if previous survey efforts were not adequate to evaluate resources potentially affected, additional survey at some level will probably be needed. The park then decides whether the Service or the applicant will perform the studies.

If the applicant is tasked with this requirement, it must hire a NPS approved archeologist or other CRM specialist(s) in the relevant resource type(s). For archeological work, an archeologist must apply to the Regional Office for a Federal Archeological Permit, DI Form 1991, to do phase one testing, then submit a report of results to the same office. The resulting report usually becomes at least the basis of the information needed to obtain review of effects on archeological resources. If it is detailed enough and only archeological resources are involved, it may suffice for the full documentation required and is usually incorporated into the EA.

If the park decides that circumstances or other considerations warrant the Service doing the work, the park's CRM advisers may be able to do the work or suggest another appropriate specialist for the job. In the majority of times when the NPS does the studies, the applicant will reimburse the Service for any and all costs including travel and per diem.

If there is any doubt about whether to require either a phase one archeological study or other studies, the park should check with the Regional Office before the process goes any further. The park 106 coordinator may also wish to discuss the issues with the park's CRM advisers and/or the State Historic Preservation Officer.

As the appropriate steps of the 106 review process are carried out, NPS approval might require certain stipulations that would be included as special conditions during the construction or operational phase of the project. The 106 documentation will also include the important operational measures as well as any restrictions or provisions indicated by the reviewing officials. An example of one such measure from cultural compliance might be:

> **The permittee will hire and/or have present an NPS approved archeologist during the construction phase of the project. The archeologist, if not a NPS**

**employee, will be answerable to the NPS and must submit a written report at the conclusion of any digging on Service lands.**

Parks should refer to the NPS Cultural Resource Management Guideline for more information on Section 106, the Programmatic Agreement, and programmatic exclusions.

**REFERENCES**

Public Law 102-381 - October 5, 1992
16 USC 1a-2(g)
31 USC 9701
36 CFR Part 61
40 CFR 1500
OMB Circular A25
36 CFR Part 800
NPS Environmental Policy Act Compliance Guidance
NPS Cultural Resource Management Guidance
1995 Nationwide Programmatic Agreement among NPS, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers

# ((NAME OF PARK))
# PRELIMINARY INFORMATION CHECKLIST

The following checklist requests information which must be provided to the park to allow our staff to properly evaluate your requested use. We will use this information to determine the appropriate analysis, environmental, and cultural documents required under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act.

Use the below outline as a guide, and type your response on separate pages. BE BRIEF, BUT COMPLETE. Provide maps and preliminary site plans where applicable. If you have any questions, please contact **((NAME))** at **((NAME OF PARK))** at **((PHONE NUMBER))**.

1. Type of requested use.
2. Project name (a brief descriptive title).
3. Proposal submitted by (name, mailing address, phone number, organization).
4. Permittee: organization, company or agency/jurisdiction; name, title, phone number, and mailing address of contact person.
5. Area of park to be impacted by this use (include map or drawing with location indicated).
6. Local/State/Federal agencies involved/contacted in this project/use (include name, phone number, title jurisdiction).
7. Starting date (proposed).
8. Ending Date (proposed).
9. Why is this project necessary?
10. What are alternative routings/sites, inside and outside the park? Why are they not acceptable?
11. What are the consequences if the use/project is not done inside the park?
12. Scope, location and dimensions of use/project (written description; general location map; engineering drawings; site plan or other descriptive information).
13. Description of what is to be done (details of work involved, and plans for use/project).
14. Preferred method of accomplishing use/project (construction sequence/schedule - if there is interference with activities of the area, discuss detour routes, signing, safety plan, erosion control plan).
15. Alternative methods for accomplishing project and reason for selection of methods outlined above.
16. List all major equipment to be used and purpose. Include type and size of equipment proposed to be used.
17. Describe the effects of your use/project on the park and area during construction. What potential physical damage, environmental impacts, effects on visitor use and traffic control will result from the project? Consider visual disturbance, noise, air, water, soil, impact to wetlands and vegetation, disruption to wildlife, traffic disruption. Discuss both short and long-term impacts.

18. Describe the long term effects of the project on the area after construction is completed.
19. What specific steps will you take to protect the use/project area, to minimize harmful effects and mitigate any permanent damage or loss discussed above.
20. What specific steps will be taken to restore the use/project area and eliminate the evidence of work after the use/project is completed.
21. Describe the cumulative effects from this and associated projects.
22. Attach supporting documents, references, photographs, drawings, maps, or other items which clarify your proposal or support your conclusions. Include here a list of any other persons consulted about this project (phone number/title/agency/letters.)

**((NAME OF PARK))**
**ENVIRONMENTAL ASSESSMENT INFORMATION GUIDE**

The park has reviewed the information you submitted on your requested use of park resources and determined that an Environmental Assessment (EA) is necessary under the National Environmental Protection Act (NEPA). Please prepare and submit the EA to the park for review and approval. **The EA will be prepared under the direction of the park, but the applicant will bear the full cost for its preparation, and any special studies.**

The following outlines the requirements for the preparation of an EA. The applicant/preparers will be expected to meet with the park staff before initiating the preparation of the EA, and for a review of the draft EA. If you have any questions, or are ready to meet on the preparation of the EA, please contact **((NAME))** at **((PHONE NUMBER))**.

1. A typical EA will range from 8 - 20 pages. The park prefers to review and discuss the draft EA before the final EA is produced.

2. **The recommended format for an EA must include:**

3. **Cover sheet**

4. **Purpose of and need for requested action.** What is the purpose and objectives of the proposed action/project? Why is there a need for the action? Explain who wants to do what. Explain where, how, and when you want to do the project. The EA must discuss the Federal/NPS laws, regulations, and guidelines that permit the granting of the proposed action. Also, discuss what Federal, State, and local laws and regulations govern the proposed action. What is the relationship of the proposed action to the National Historic Preservation Act, section 106 cultural compliance and clearance? What other Federal, State or local permits will be required? Identify other Federal, State, and local agencies involved in this NEPA analysis and permitting for this project.

5. **Alternative include proposed action:** The EA must provide at a minimum, an in-depth discussion of each of the following alternatives: NO ACTION, PREFERRED ALTERNATIVE (NPS), OTHER ALTERNATIVES. Your description will focus on potential actions, and summarizing their short and long-term environmental consequences, and any related mitigation. Explain why the discussed alternatives represents a range of reasonable alternatives. Describe briefly the alternatives eliminated from consideration and explain why they were eliminated.

6. **Affected environment** is a summary of baseline information of sufficient detail for the affected area. This includes all physical, biological, social, and economic features of the affected environment. Significant resources should receive more extensive discussion.

7. **Environmental Consequences:** Discuss any known or possible adverse effects or derogation of park values from the proposed project alternatives, short and long-term, and include recommendations for mitigation. Any discussion of mitigation must include the likelihood of the long-term success of the proposed mitigation. Arrange this chapter either by resources or alternatives. Discuss any unavoidable adverse effects, both short and long-term.

8. **List of preparers and background.**

9. **List of agencies, organizations, persons consulted.**

10 **Supporting documentation** including correspondence from other agencies, permits, etc.

11. **Provide photographs** (overall area, medium shots, and close-ups, minimum 4X6 color, matte) of the proposed project area and current conditions, **maps, proposed site plans, etc.**

12. The EA may need to address the following items for potential or actual impacts:

- Consult with affected local, state, regional, state agencies
- Affect cultural or archaeological resources (structures/sites)
- Affect the historic scene
- Affect the visual scene or quality
- Involve ground disturbance, highly erodible soils, bedrock, streambeds, or geohazards
- Create stormwater runoff or erosion and sedimentation
- Change surface or ground water flow or quantity
- Affect surface or ground water quality
- Affect air resources or quality
- Affect Federal or state rare, endangered, threatened, unique or special concern plants, animals, or habitats
- Affect wetlands or riparian zone (forested or non-forested)
- Affect floodplains
- Involve structures, fill, or discharge of dredged materials into navigable water
- Affect, add or remove vegetation (exotics, revegetation, landscaping)
- Affect wildlife (terrestrial or aquatic) and associated habitats
- Change existing noise level
- Involve Wilderness
- Change existing traffic flow/circulation
- Change the amount of waste disposal
- Alter available visitor services or activities (parking, trails, recreation, handicapped access
- Involve or affect wild or scenic rivers
- Impact to biodiversity
- Change or add light sources

- Involve or impact prime farmland, grazing
- Involve the use of pesticides, herbicides, etc.
- Involve the use, handling, storage, disposal, discharge of hazardous or toxic substances
- Add or remove safety or public health threats
- Involve Coastal Zone Management areas
- Involve American Indian Religious Use
- Require Federal, state, or local permits
- Affect other agencies, tribal land use plans or policies
- Affect minority or law income populations
- Other socioeconomic impacts
- Affect energy resources including conservation
- Involve subsistence use
- Cumulative impacts (explain below)
- Other (specify below)

13. At a minimum you need to check with the local planning jurisdictions and document in the EA.

14. The following is a list of possible permits required for this project. Federal: USFWS, BLM, USFS, Army Corp of Engineers, NPS special use permit or right-of-way permit; State: DOT tree clearing permit, local wetlands, building, water discharge, rezoning, subdivision, erosion/sedimentation control plan, land clearing.

15. Provide a list of permits being sought; and the contact name, phone number, and Federal, state or local governmental agencies name.

16. Before any NPS permit will be issued, the EA must be approved by the NPS Regional Office. Also, all other Federal, state and local permits required for this specific project must be approved, with confirmation provided to the park.

17. Additional detailed plans may be required before actual work may begin. This may include an erosion and sedimentation plan, vegetation survey, environmental protection and impact monitoring plan, etc. The local and state jurisdictions may also require the preparation of plans dealing with wetlands mitigation, erosion and sedimentation control, etc.

# (*NAME OF PARK*)
# ENVIRONMENTAL REVIEW AND COMPLIANCE FORM

| | |
|---|---|
| Project Title:<br><br>Project Location: (attach map) | Project Start Date:<br>Project Completion Date:<br>Project Initiator:<br>Request Date: |

Project Description (what is the project's purpose, how and when will it be accomplished, map of project location and site plan is mandatory. Use additional sheets as necessary)

**POTENTIAL IMPACTS AND PROPOSED MITIGATION -** will the project: (Y/N/U = Yes/No/Unknown)

| | |
|---|---|
| 1 Site visit completed | Y/N |
| 2 Consult with affected local, state, regional agencies | Y/N/U |
| 3 Affect cultural or archaeological resources (structures/sites)[1] | Y/N/U |
| 4 Affect the historic scene | Y/N/U |
| 5 Affect the visual scene or quality | Y/N/U |
| 6 Involve ground disturbance, highly erodible soils, bedrock, streambeds or geohazards | Y/N/U |
| 7 Create stormwater runoff or erosion and sedimentation | Y/N/U |
| 8 Change surface or ground water flow or quantity | Y/N/U |
| 9 Affect surface or ground water quality | Y/N/U |
| 10 Affect air resources or quality | Y/N/U |
| 11 Affect federal or state rare, endangered, threatened, unique or special concern plants, animals, or habitats | Y/N/U |
| 12 Affect wetlands or riparian zone (forested or non-forested)[2] | Y/N/U |
| 13 Affect floodplains | Y/N/U |
| 14 Involve structures, fill, or discharge of dredged materials into navigable water | Y/N/U |
| 15 Affect, add or remove vegetation (exotics, revegetation, landscaping) | Y/N/U |
| 16 Affect wildlife (terrestrial or aquatic) and associated habitats | Y/N/U |
| 17 Change existing noise level | Y/N/U |
| 18 Involve Wilderness | Y/N/U |
| 19 Change existing traffic flow/circulation | Y/N/U |
| 20 Change the amount of waste disposal | Y/N/U |
| 21 alter available visitor services or activities (parking, trails, recreatio9n, handicapped access) | Y/N/U |
| 22 Involve or affect wild or scenic rivers | Y/N/U |
| 23 Impact to biodiversity | Y/N/U |
| 24 Change or add light sources | Y/N/U |
| 25 Involve or impact prime farmland, grazing | Y/N/U |
| 26 Involve the use of pesticides, herbicides, etc. | Y/N/U |
| 27 Involve the use, handling, storage, disposal, discharge of oil, hazardous or toxic substances | Y/N/U |
| 28 Add or remove safety or public health threats | Y/N/U |
| 29 Involve Coastal Zone Management areas | Y/N/U |
| 30 Involve American Indian Religious Use | Y/N/U |
| 31 Require Federal, State, or local permits | Y/N/U |
| 32 Affect other agencies, tribal land use plans or policies | Y/N/U |
| 33 Affect minority or low income populations | Y/N/U |
| 34 Other socioeconomic impacts | Y/N/U |
| 35 Affect energy resources including conservation | Y/N/U |
| 36 Involve subsistance use | Y/N/U |
| 37 Cumulative Impacts (explain below)[3] | Y/N/U |
| Other (specify below) | Y/N/U |

**Explain each of the above "Yes" answers, by number, and any proposed mitigation ( use seperate sheet if needed):**

[1] Affects, effects, alter, change, impacts are interchangeable. Direct effects are caused by the action and occur at the same time and place. Indirect effects are caused by the action and are later in time or farther removed in distance. Indirect effects may include growth inducing effects related to changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems. Affects include ecological (i.e. effects on natural resources and on the components, structures, and functioning of affected ecosystems), cultural, historic, aesthetic, economic, social, or health. Effects may be both beneficial and detrimental.

[2] If yes, separate clearance through WASO-WRD required.

[3] Cumulative impact on the environment result from incremental impact of the action when added to other past, present, and foreseeable future actions regardless of what agency (Federal or non-Federal) or organization or person undertakes such actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

**Discussion of Alternatives (consider no action, other sites or ways to accomplish the project):**

**Catagorical Exclusion (CX): YES / NO** **Catagorical Exclusion #:** **NRMS Initial/Date:**

**Explanation:**

**Environmental Assessment Required if any of the following is answered Yes (Y/N = Yes/No):**

- Have significant adverse effects on public health or safety Y / N
- Have adverse effects on such unique characteristics as historic or cultural resources, park, recreaction or refuge lands, wilderness, wild or scenic rivers, sole or principle drinking water aquifers, prime farmlands, wetlands, floodplains, or ecological significant or critical areas, including those listed on National Register or Natural landmarks Y / N
- Have highly controversial environmental effects Y / N
- Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risk Y / N
- Establish precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects Y / N
- Be directly related to other actions with individually insignificant, but cumulatively significant environmental effects Y / N
- Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places Y / N
- Have adverse effects on species listed or proposed for listing on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these Species Y / N
- Require compliance with EX 11988, Floodplain Management, EC 11900 Protection of Wetlands, or the Fish and Wildlife Coordination Act Y / N
- Threaten to violate Federal, state, local or tribal law or requirement imposed for the protection of the environment Y / N
- Require a permit from a Federal, state or local agency to proceed unless the agency from which the permit is required agrees a CX is appropriate Y / N
- Have the potential for significant impact as indicated by a Federal, state, or local agency or Indian Tribe Y / N
- Have the potential to be controversial regardless of its impact Y / N

**Environmental Assessment Recommended: YES / NO_____ NRMS Initial/Date_____**

**106 Compliance Needed: YES / NO** **Initiated: YES / NO** **Date _____** **Approved: YES / NO** **Date _____**

**CRMS Initial/Date: _____**

**Preliminary Review (initial and date)**

**_____ Chief, Interpretation** **_____ Chief, RMVP**
**_____ CRMS** **_____ Special Park Use Coordinator**
**_____ Chief, Maintenance** **_____ Natural Resource Management Spec.**

**Reviewer Comments (include concerns, mitigation and permit conditions recommended): Initial/Date _____**

**Approved: Yes ____ No ____**
**Superintendent's Signature: _____ Date: _____**

## CATEGORICAL EXCLUSIONS

The following Departmental categorical exclusions are a direct quote from and are found at 516 DM 6, Appendix 7 Section 7.4. They are listed here for quick reference. Exclusions relating to development and especially overhead and underground utility lines are found in Part C.

The correct wording to use when quoting a categorical exclusion (the example used is for a newly added overhead line to an already existing set of poles for a right-of-way permit) is as follows:

The **((type of use))** is categorically excluded from NEPA compliance under 516 DM 6, Appendix 7, Section 7.4, Paragraph C, (13).

Special Park Use Coordinators are referred to NPS-12 or the Departmental Manual for additional information.

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7.4 **Categorical Exclusions**

In addition to the actions listed in the Departmental categorical exclusions in Appendix 1 of 516 DM 2, many of which the Service also performs, the following NPS actions are designated categorical exclusions unless the action qualifies as an exception under Appendix 2 to 516 DM 2. A listing of exceptions to Departmental categorical exclusions are found at the end of this Exhibit.

A. Actions Related to General Administration

(1) Changes or amendments to an approved action when such changes would cause no or only minimal environmental impact.

(2) Land and boundary surveys.

(3) Minor boundary changes.

(4) Reissuance/renewal of permits, right-of-way or easements not involving new environmental impacts.

(5) Conversion of existing permits to rights-of-way, when such conversions do not continue or initiate unsatisfactory environmental conditions.

(6) Issuances, extensions, renewals, reissuances or minor modifications of concession contracts or permits not entailing new construction.

(7) Commercial use licenses involving no construction.
(8) Leasing of historic properties in accordance with 36 CFR 18 and NPS-38.
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(9) Preparation and issuance of publications.

(10) Modifications or revisions to existing regulations, or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions or new regulations do not:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

(11) At the direction of the NPS responsible official, actions where NPS has concurrence or coapproval with another bureau and the action is a categorical exclusion for that bureau.

B. Plans, Studies and Reports

(1) Changes or amendments to an approved plan, when such changes would cause no or only minimal environmental impact.

(2) Cultural resources maintenance guides, collection management plans and historic furnishings reports.

(3) Interpretive plans (interpretive prospectuses, audio-visual plans, museum exhibit plans, wayside exhibit plans.)

(4) Plans, including priorities, justifications and strategies, for non-manipulative research, monitoring, inventorying and information gathering.

(5) Statements for management, outlines of planning requirements and task directives for plans and studies.

(6) Technical assistance to other Federal, State and local agencies or the general public.

(7) Routine reports required by law or regulation.
(8) Authorization, funding or approval for the preparation of Statewide Comprehensive Outdoor Recreation Plans.

(9) Adoption or approval of surveys, studies, reports, plans and similar documents which will result in recommendations or proposed actions which would cause no or only minimal environmental impact.

(10) Preparation of internal reports, plans, studies and other documents containing recommendations for action which NPS develops preliminary to the process of preparing a specific Service proposal or set of alternatives for decision.

(11) Land protection plans which propose no significant change to existing land or visitor use.

(12) Documents which interpret existing mineral management regulations and policies, and do not recommend action.

C. Actions Related to Development

(1) Land acquisition within established park boundaries.

(2) Land exchanges which will not lead to significant changes in the use of land.

(3) Routine maintenance and repairs to non-historic structures, facilities, utilities, grounds and trails.

(4) Routine maintenance and repairs to cultural resource sites, structures, utilities and grounds under an approved Historic Structures Preservation Guide or Cyclic Maintenance Guide; or if the action would not adversely affect the cultural resource.

(5) Installation of signs, displays, kiosks, etc.

(6) Installation of navigation aids.

(7) Establishment of mass transit systems not involving construction, experimental testing of mass transit systems, and changes in operation of existing systems (e.g., routes and schedule changes).

(8) Replacement in kind of minor structures and facilities with little or no change in location, capacity or appearance.

(9) Repair, resurfacing, striping, installation of traffic control devices, repair/replacement of guardrails, etc., on existing roads.

(10) Sanitary facilities operation.

(11) Installation of wells, comfort stations and pit toilets in areas of existing use and in developed areas.

(12) Minor trail relocation, development of compatible trail networks on logging roads or other established routes, and trail maintenance and repair.

(13) Upgrading or adding new overhead utility facilities to existing poles, or replacement poles which do not charge existing pole line configurations.

(14) Issuance of rights-of-way for overhead utility lines to an individual building or well from an existing line where installation will not result in significant visual intrusion and will involve no clearance of vegetation other than for placement of poles.

(15) Issuance of rights-of-way for minor overhead utility lines not involving placement of poles or towers and not involving vegetation management or significant visual intrusion in an NPS-administered area.

(16) Installation of underground utilities in previously disturbed areas having stable soils, or in an existing overhead utility right-of-way.

(17) Construction of minor structures, including small improved parking lots, in previously disturbed or developed areas.

(18) Construction or rehabilitation in previously disturbed or developed areas, required to meet health or safety regulations, or to meet requirements for making facilities accessible to the handicapped.

(19) Landscaping and landscape maintenance in previously disturbed or developed areas.

(20) Construction of fencing enclosures or boundary fencing posing no effect on wildlife migrations.

D. Actions Related to Visitor Use

(1) Carrying capacity analyses.

(2) Minor changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection in accordance with existing regulations.

(3) Changes in interpretive and environmental education programs.

(4) Minor changes in programs and regulations pertaining to visitor activities.

(5) Issuance of permits for demonstrations, gatherings, ceremonies, concerts, arts and crafts shows, etc., entailing only short-term or readily mitigatable environmental disturbance.

(6) Designation of trailside camping zones with no or minimal improvements.

E. Actions Related to Resource Management and Protection

(1) Archeological surveys and permits, involving only surface collection or small-scale test excavations.

(2) Day-to-day resource management and research activities.

(3) Designation of environmental study areas and natural research areas.

(4) Stabilization by planting native plant species in disturbed areas.

(5) Issuance of individual hunting and/or fishing licenses in accordance with State and Federal regulations.

(6) Restoration of noncontroversial native species into suitable habitats within their historic range, and elimination of exotic species.

(7) Removal of park resident individuals of non-threatened/endangered species which pose a danger to visitors, threaten park resources or become a nuisance in areas surrounding a park, when such removal is included in an approved resource management plan.

(8) Removal of non-historic materials and structures in order to restore natural conditions.

(9) Development of standards for, and identification, nomination, certification and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National natural Landmark Programs.

F. Actions Related to Grant Programs

(1) Proposed actions essentially the same as those listed in paragraphs A-E above.

(2) Grants for acquisition of areas which will continue in the same or lower density use with no additional disturbance to the natural setting.

(3) Grants for replacement or renovation of facilities at their same location without altering the kind and amount of recreational, historical or cultural resources of the area; or the integrity of the existing setting.

(4) Grants for construction of facilities on lands acquired under a previous NPS or other Federal grant provided that the development is in accord with plans submitted with the acquisition grant.

(5) Grants for the construction of new facilities within an existing park or recreation area, provided that the facilities will not:

(a) conflict with adjacent ownerships or land use, or cause a nuisance to adjacent owners or occupants; e.g., extend use beyond daylight hours;

(b) introduce motorized recreation vehicles;

(c) introduce active recreation pursuits into a passive recreation area;

(d) increase public use or introduce noncompatible uses to the extent of compromising the nature and character of the property or causing physical damage to it; or

(e) add or alter access to the park from the surrounding area.

(6) Grants for the restoration, rehabilitation, stabilization, preservation and reconstruction (or the authorization thereof) of properties listed on or eligible for listing on the National Register of Historic Places, at their same location and provided that such actions:

(a) will not alter the integrity of the property or its setting;

(b) will not increase public use of the area to the extent of compromising the nature and character of the property; and

(c) will not cause a nuisance to the adjacent property owners or occupants.

## ADDITIONAL CATEGORICAL EXCLUSIONS

The following Departmental categorical exclusions are a direct quote from and are found at 516 DM 2, Appendix 1. They are listed here for quick reference.

The correct wording to use when quoting a categorical exclusion from this Chapter (the example used is for a minor change in the park boundary) is as follows:

*The proposed change in the park boundary is categorically excluded from NEPA compliance under 516 DM 2, Section 2.3A(2), Appendix 1, Paragraph (1.9).*

Special Park Use Coordinators are referred to NPS-12 or the Departmental Manual for additional information.

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The following actions are categorical exclusions pursuant to 516 DM 2.3A(2). However, environmental documents will be prepared for individual actions within these categorical exclusions if the exceptions listed in 516 DM 2, Appendix 2, apply.

1.1 Personnel actions and investigations and personnel services contracts.

1.2 Internal organizational changes and facility and office reductions and closings.

1.3 Routine financial transactions, including such things as salaries and expenses, procurement contracts, guarantees, financial assistance, income transfers, audits, fees, bonds and royalties.

1.4 Law enforcement and legal transactions, including such things as arrests, investigations, patents, claims, legal opinions, and judicial activities including their initiation, processing, settlement, appeal or compliance.

1.5 Regulatory and enforcement actions, including inspections, assessments, administrative hearings and decisions; when the regulations themselves or the instruments of regulations (leases, permits, licenses, etc.) have previously been covered by the NEPA process or are exempt from it.

1.6 Non-destructive data collection inventory (including field, aerial and satellite surveying and mapping), study, research and monitoring activities.

1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance and replacement activities having limited context and intensity; e.g. limited size and magnitude or short-term effects.

1.8 Management, formulation, allocation, transfer and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

1.9 Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations, and minor boundary changes and land transactions; or having
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primarily economic, social, individual or institutional effects; and comments and reports on referrals of legislative proposals.

1.10 Policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.

1.11 Activities which are educational, informational, advisory or consultative to other agencies, public and private entities, visitors, individuals or the general public.

## EXEMPTION FROM CATEGORICAL EXCLUSIONS

The following is a listing of exceptions to individual actions which may be included within categorical exclusions. Environmental documents must be prepared for any actions involving these exceptions. This listing is taken from 516 DM 2.3A(3) updated 9/26/84. What this means is that while the majority of the use (action) may well be categorically excluded from NEPA compliance, a certain part of that action might fall under one of the categories listed below. If this is the case, then that certain part might require full NEPA compliance while the rest of the action remains categorically excluded.

``````

The following exceptions found in 516 DM Chapter 2.3A(3) Appendix 2, apply to individual actions within categorical exclusions. Environmental documents must be prepared for actions which may:

2.1 Have significant adverse effects on public health or safety.

2.2 Have adverse effects on such unique geographic characteristics as historic or cultural resources, park recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks.

2.3 Have highly controversial environmental effects.

2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

2.6 Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.

2.7 Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.

2.8 Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.

2.9 Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.
``````

2.10 Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

**FINDING OF NO SIGNIFICANT IMPACT**
**((PERMITTEE NAME))**
**((TYPE OF USE OR PROJECT))**

The proposed **((use or project))** involves **((construction, operation, maintenance, etc)).** The purpose of the **((use or project))** is **((give brief description))**.

The **((use or project))** meets the NEPA criteria for National Park Service categorical exclusion under **((quote the specific exclusion))**.

Documentation from the **((permittee))**, in the form of an environmental assessment, is attached. Compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, **((has been initiated/completed and enclosed))** between the National Park Service, the **((list state))** State Historic Preservation Officer, and the Advisory Council on Historic Preservation **((and/or an approved Section 106 form))**.

The proposal, as presented in the enclosed Environmental Assessment for **((use or project))** at **((name of park))**, either does not constitute a major Federal action which will have a significant effect on the air quality, wildlife, vegetation, or the human environment as defined in Section 102(2) of the National Environmental Policy Act of 1969 (PL 91-190, 83 stat. 853), or the effects of such impacts will be satisfactorily mitigated as described in the Environmental Assessment attached. Therefore, the National Park Service will not prepare an environmental impact statement for this project.

**((Name))**
Regional Director
**((Region))**

## ASSESSMENT OF ACTIONS HAVING AN EFFECT ON CULTURAL RESOURCES

A. **DESCRIPTION OF UNDERTAKING**

1. Park:_____ Park district (optional)

2. **Work/Project Description:**
a. Project name_____date _____ park project no(s.)
b. Describe project and area of potential effects (as defined in 36 CFR 800.2[c]); explain why work/project is needed.

3. **Has the area of potential effects been surveyed to identify cultural resources?**
____ No
____ Yes Source or reference
Check here if no known cultural resources will be affected. (If this is because area has been disturbed, please explain or attach additional information to show the disturbance was so extensive as to preclude intact cultural deposits.)

4. **Potentially Affected Resource(s):**
Name and number(s):_____ location:_____ NR status:
Name and number(s):_____ location:_____ NR status:
(REPEAT FOR EACH AFFECTED RESOURCE)

5. **The proposed action will:** (check as many as apply)
____ Destroy, remove, or alter features/elements from a historic structure
____ Replace historic features/elements in kind
____ Add nonhistoric features/elements to a historic structure
____ Alter or remove features/elements of a historic setting or environment (inc. terrain)
____ Add nonhistoric features/elements (inc. visual, audible, or atmospheric) to a historic setting or cultural landscape
____ Disturb, destroy, or make archeological resources inaccessible
____ Disturb, destroy, or make ethnographic resources inaccessible
____ Potentially affect presently unidentified cultural resources
____ Begin or contribute to deterioration of historic features, terrain, setting, landscape elements, or archeological or ethnographic resources
____ Involve a real property transaction (exchange, sale, or lease of land or structures)
____ Other (please specify)

6. **Measures to prevent or minimize loss or impairment of historic/prehistoric properties:**
(Remember that setting, location, and use may be relevant.)

7. **Supporting Study Data:** (Attach if feasible; if action is in a plan, EA or EIS, give name and project or page number.)

8. **Attachments:** [ ] Maps [ ] Archeological survey, if applicable [ ] Drawings [ ] Specifications [ ] Photographs [ ] Scope of Work [ ] Site plan [ ] List of Materials [ ] Samples [ ]Other

**Prepared by** _____ Date
Title_____ Telephone

B. **REVIEWS BY CULTURAL RESOURCE SPECIALISTS**

The park 106 coordinator requested review by the park's cultural resource specialist/advisers as indicated by check-off boxes or as follows:

SPECIALISTS: Your comments here (or attached) show that you have reviewed this proposal for conformity with requirements of Section 106, with the 1995 Servicewide PA (if applicable), and applicable parts of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, the NPS *Management Policies*, and the NPS *Cultural Resource Management Guideline*, and have given your best professional advice about this project and the issues relevant to the Section 106 process, including identification and evaluation of historic properties and further consultation needs.

**[ ] ARCHEOLOGIST**
Name:
Date:
Comments:

*Check if project does not involve ground disturbance* [ ]
Assessment of Effect: ___No Effect ___No Adverse Effect ___Adverse Effect
___Programmatic Exclusion
Recommendations for conditions or stipulations:

**[ ] CURATOR**
Name:
Date:
Comments

Assessment of Effect: ___No Effect ___No Adverse Effect ___Adverse Effect
___Programmatic Exclusion
Recommendations for conditions or stipulations:

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**[ ] ETHNOGRAPHER**
Name:
Date:
Comments:

Assessment of Effect: ___No Effect ___No Adverse Effect ___Adverse Effect
___Programmatic Exclusion
Recommendations for conditions or stipulations:

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**[ ] HISTORIAN**
Name:
Date:
Comments:

Assessment of Effect: ___No Effect ___No Adverse Effect ___Adverse Effect
___Programmatic Exclusion
Recommendations for conditions or stipulations:

**[ ] HISTORICAL ARCHITECT**
Name:
Date:
Comments:

Assessment of Effect: ___No Effect ___No Adverse Effect ___Adverse Effect
___Programmatic Exclusion
*Check if project meets Secretary's Standards* [ ]
Recommendations for conditions or stipulations:

**[ ] HISTORICAL LANDSCAPE ARCHITECT**
Name:
Date:
Comments:

Assessment of Effect: ___No Effect ___No Adverse Effect ___Adverse Effect
___Programmatic Exclusion
*Check if project meets Secretary's Standards* [ ]
Recommendations for conditions or stipulations:

---

**[ ] OTHER ADVISERS**
Name:
Title or area of specialty:
Date:
Comments:

Assessment of Effect: ___No Effect ___No Adverse Effect ___Adverse Effect
___Programmatic Exclusion
Recommendations for conditions or stipulations:

C. **PARK SECTION 106 COORDINATOR'S REVIEW AND RECOMMENDATIONS**

1. **Assessment of Effect:**

_____No Effect _____No Adverse Effect _____Adverse Effect

2. **Compliance requirements:**

[ ] A. STANDARD 36 CFR PART 800 CONSULTATION
Further consultation under 36 CFR Part 800 is needed.

[ ] B. PROGRAMMATIC EXCLUSION UNDER THE 1995 SERVICEWIDE PROGRAMMATIC AGREEMENT (PA)
The above action meets all conditions for a programmatic exclusion under Stipulation IV of the 1995 Servicewide PA for Section 106 compliance.

APPLICABLE EXCLUSION: Exclusion IV.B _____ (Specify 1-13 or IV.C addition to the list of exclusions.)

[ ] C. PLAN-RELATED UNDERTAKING
Consultation and review of the proposed undertaking were completed in the context of a plan review process, in accordance with the 1995 Servicewide PA and 36 CFR Part 800.
Specify plan/EA/EIS:

[ ] D. UNDERTAKING RELATED TO ANOTHER AGREEMENT
The proposed undertaking is covered for Section 106 purposes under another document such as a statewide agreement established in accord with 36 CFR 800.7 or counterpart regulations.
Specify:

[ ] E. STIPULATIONS/CONDITIONS
Following are listed any stipulations or conditions necessary to ensure that the assessment of effect above is consistent with 36 CFR Part 800 criteria of effect or to avoid or reduce potential adverse effects.

Recommended by Park Section 106 coordinator:
Name
Title
Date

D. **SUPERINTENDENT'S APPROVAL**

The proposed work conforms to the NPS *Management Policies* and *Cultural Resource Management Guideline*, and I have reviewed and approve the recommendations, stipulations, or conditions noted in Section C of this form.

Name/Signature of Superintendent

Date

SUPPLEMENTAL GUIDANCE

The Section 106 process is described in regulations promulgated by the Advisory Council on Historic Preservation as 36 CFR Part 800. PLEASE SEE ESPECIALLY 36 CFR 800.4-6, 800.8, and 800.9. Additional guidance published by the Advisory Council includes *Section 106, Step by Step* and *Preparing Agreement Documents*. Both of these discuss information and documentation needs involved in Section 106. The following discussion is not a substitute for those documents, but a brief set of reminders.

This form may be used for actions that are undertakings as defined for purposes of Section 106. It is a model that may be altered to suit the needs of a particular park and its advisers. It may or may not be the most effective format for documenting Section 106 compliance, depending on the complexity and planning needs or history of the undertaking. It can be a starting point for the review process within NPS, and it may be used to document programmatic exclusions under the 1995 Servicewide Programmatic Agreement (stipulation IV). For some cases, a memorandum, more detailed report, or NEPA document that includes information meeting documentation requirements in 36 CFR Part 800 may be necessary or preferable.

The form is designed to follow, in a condensed way, the basic questions that should be asked and answered in meeting responsibilities under 36 CFR Part 800. The basic questions are:

A. What is the project and how did the park identify it as an undertaking subject to Section 106?

> (As defined in 36 CFR 800.2[o], an undertaking means a project, activity, or program that can result in changes in the character or use of properties listed or eligible for listing in the National Register of Historic Places. If in doubt about whether a project is an undertaking subject to Section 106 review, the park's Section 106 coordinator should consult the state historic preservation officer (SHPO) or others in the park's group of CRM advisers on Section 106.)

B. Does the park know whether the project's “area of potential effects” includes properties in or eligible for the National Register of Historic Places?

> (Did the park define the area of potential effects in a comprehensive way? What historic properties will be affected by this undertaking? How did NPS identify those properties; did NPS make a reasonable and good-faith effort to ensure that no places that might be eligible for the National Register have been overlooked? Did NPS have enough information to evaluate the Register eligibility of properties in the area? Documentation may include descriptions of those properties and of efforts to identify them, such as National Register forms and reports or narratives summarizing the resources and survey efforts.)

C. How will the project affect any such eligible historic properties?

> (How did the park and its advisers apply the criteria of effect and adverse effect in 36 CFR 800.9? How did the park get the advice of the SHPO, and of other interested persons, on this point?)

D. Did the park provide opportunities for comment by local governments, Indian tribes, other interested persons and the public that were appropriate to the scale and type of the undertaking and the known or expected public interests?

E. If the undertaking would have adverse effects, how did the park and its advisers consider alternatives that would avoid or mitigate the potential for adverse effects?

Generally, Section 106 consultation results in an agreement document of the types described in the Council's *Preparing Agreement Documents*. That booklet provides suggestions for writing agreement documents and sample formats, as well as some standard language for conditions and stipulations.

Decisions about which CRM disciplines and technical skills are relevant to the project at hand are important. This form should reflect information showing how the park made decisions about which CRM specialists should participate in and advise on individual projects. It should be used to indicate how CRM specialists have been involved in those decisions. This does not mean, however, that every one of the park's CRM advisers must comment on every undertaking.

ITEM BY ITEM:

No. 2: "Area of potential effects" is defined in 36 CFR 800.2(c) as "the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist."

No. 4: In the first blank, please include applicable park facility or site numbers or IDLCS, IDCLI, ARI, & HABS/HAER numbers. For location, please note UTM coordinates, if available, or township, range, and section if applicable and available. If neither of these is readily available, other location description may be used. In the last blank, specify National Register status of affected resource(s), entering the appropriate number from the list below:

(1) listed in Register and documented
(2) listed but not documented
(3) determined eligible by the Keeper of the Register
(4) determined ineligible by the Keeper
(5) found eligible for 106 purposes through consultation with the SHPO
(6) found not eligible for 106 purposes through consultation with the SHPO
(7) a designated National Historic Landmark
(8) within a Register-eligible district—please name district
(0) status unknown by person completing Part A of the form

# PERMITTING INSTRUMENTS

## INTRODUCTION

All special park uses must be documented on a appropriate form. This Chapter identifies the only permitting documents approved for use by the National Park Service. These documents are not authorizations for activities, but rather instruments used to document special park use requests that are allowed under specific authority, as described in Chapter 3, and are issued for the reasons listed and conform with the decision process outlined in Chapter 8.

## PERMITTING INSTRUMENTS FOR SPECIAL PARK USES

The following are the approved instruments to permit special park uses in units of the NPS. Additional terms and conditions, decided by management to be essential for a particular park purpose, may be added or attached to the permit as an addendum.

Also listed in each category is the individual with the delegated authority to sign the permit, i.e. Secretary, Assistant Secretary, Director, Regional Director or Superintendent.

Special Use Permit - Document issued by superintendents to an individual or organization to allow the use of NPS administered resources. All special park uses that do not have a specific, approved permitting instrument, require a special use permit, NPS Form 10-114. These uses include, but are not limited to, filming, grazing, special events, First Amendment activities and military operations. Special use permits are issued as Short Term, not to exceed 1 year, or Long Term, not to exceed 5 years. The superintendent will conduct an annual administrative and operational review of those permits written to last more than one year. This review will take place on or before the anniversary date of the permit and each successive year the permit is in effect. At a minimum, the review will determine the continued appropriateness of the use as well as it's continued lack of impairment or derogation to the resource, values or purposes for which the park was established.

The special use permit form is not an authority in and of itself. When it is issued, the authority for the use allowed must be cited on the face of the permit. See Chapter 2 and 3 and Appendix 12. The Park Manager may append park specific terms and conditions as desired. The issuance of special use permits must be consistent with Appendix 1.

Right-of-Way Permit - The required instrument, issued by the Regional Director, to authorize all new utilities including water conduits, on NPS lands. This includes those utilities not owned by the NPS but serving NPS and/or concession facilities. Superintendents may renew or amend existing right-of-way permits, or convert other documents to right-of-way permits for existing utilities.

NPS owned utilities do not require a ROW permit, nor is one required when the specific use is authorized by a property right, such as a deeded easement, or by park-specific or other legislation when the statutory language is so written as to have the same effect as a deeded easement. A right-of-way permit does not grant any interest in the land and is a revocable permit issued at the discretion of the NPS.

The right-of-way permit format has been standardized by the NPS and approved by the Washington Solicitor's Office. When this format is used without substantive changes, it does not require further review by the solicitor. See Appendix 5 and 36 CFR Part 14.

Letter of Authorization - The LOA is included here only in the interest of information and completeness. In rare circumstances, the LOA may be issued for a special park use **only** for short-term, non-repetitive and specific activities that have arisen usually on an emergency basis. It is normally used as an interim document while the special use or right-of-way permit is being processed. An example would be a suddenly arising health and safety issue requiring a new utility line be placed quickly, well before the normal permitting process could be finalized. Superintendents should note that an LOA, used or issued for these reasons, still must complete the same compliance required for the other two permits. Written authorization for use of this document must be received from the Regional Office prior to it's issuance. Such documentation will be placed in and become a part of the permit's administrative record.

## OTHER AUTHORIZING INSTRUMENTS

Over the years, other permitting instruments have been used to authorize special uses. Some of these are Cooperative Agreements, Interagency Agreements and General Agreements (used to include MOU and MOA). Under normal circumstances, these instruments authorize activities that fall under the guidance of RM-20 (NPS Agreements), **not** RM-53 (Special Park Uses). Information on other permitting instruments may be found in RM-48 (Commercial Visitor Services and Concessions Management), RM-77 (Natural Resources), and RM-38, (Historic Leases).

The NPS receives requests for permits from educational institutions, non-profit or other environmental groups for the purpose of conducting limited scientific investigations, evaluations, or reviews. This type of activity does not normally fall under the definition of a special use and may require different permitting considerations. For this reason, all such requests should be coordinated with the park Research Coordinator or Resource Management Specialist to determine if a research permit will be required. See Appendix 6 Scientific Research and Related Collecting.

# PERMITTING AND RENEWAL CONSIDERATIONS

## INTRODUCTION

There are **three primary reasons for issuing a permit** for a special use, regardless of type or purpose:

1. **Impose conditions** to manage the activity and prevent impairment or derogation of resources, values and purposes for which the park was established;
2. Obtain the **signature of the permittee agreeing to the conditions** and other statements contained within the document; and
3. Establish a **written record of the special use** as part of the park's administrative record.

Although we rarely think of them as such, these permits are a type of contract in which we sign agreeing to the use, and the permittee signs agreeing to the conditions we impose. As such, these permits become another tool for us to prevent derogation to the parks.

## CONSIDERATIONS FOR NEW REQUESTS

With the possible exception of those that are simple or routine, all special park use requests should be obtained in writing. To receive consideration, the requested special park use must not:

- Cause injury or damage to park resources; or
- Be contrary to the purposes for which the park was established; or
- Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic or commemorative locations within the park; or
- Unreasonably interfere with the interpretive visitor service or other program activities, or with the administrative activities or the NPS; or
- Substantially impair the operation of public facilities or services or NPS concessionaires or contractors; or
- Present a clear and present danger to public health and safety; or
- Result in significant conflict with other existing uses.

A superintendent must deny initial or renewal requests upon finding that any of the above conditions will not be met. It is important to note that special park uses do not have to be allowed simply because a request has been made and discretionary authority for such use exists. The need to develop rationale for the approval of special park use requests is as important as it is for the denial of such requests. The decision to approve or deny a special park use should be based on objective data and recorded in the administrative record. (See Chapter 5)

To aid in the decision process to approve or deny a special use, the manager may use the FLOW CHART FOR SPECIAL PARK USE INITIAL REQUESTS found later in this chapter. This chart leads the manager through the correct sequence of decisions by asking key questions. The answers to these questions might also become a part of the written administrative record, depending upon the type of request or other circumstances.

If the requested special park use is not prohibited, and is an authorized privilege rather than a right, the park manager might consider the following additional questions prior to deliberation of the request. The questions are designed to give the manager additional information that might prove useful in the decision. If the answer to any of these questions becomes influential in the final decision, that should be documented and included in the Administrative Record.

1. What is the real purpose of the proposed special park use?

2. How does this proposed activity relate to the legislative purposes for which the area was established?

3. How does this proposed activity relate to the park's other special designations, to include such items as legislated wilderness, wild and scenic rivers, class I air quality area classification, world heritage sites, or biosphere reserve designation, etc.?

4. What guidance for this type of activity is found in the NPS Management Policies?

5. How does the proposed activity relate to the "desired park visitor experience?" Is the activity in conflict with the primary values of the park?

6. What is the relation of the proposed activity to the park's General Management Plan, to the park's management zoning plan, and to other relevant park planning documents?

7. What is the value to the park of the proposed activity?

8. Does the proposed activity depend upon park-specific resources and enhance the desired "park experience," or relate to a longstanding traditional relationship between park users and resources? Or would it make use of the park simply because it is a conveniently located public place, or simply the less expensive place to hold the activity?

9. What are the possibilities of accommodating this proposed activity outside of the park? Is there a practicable alternative site or route?

10. Would the proposed activity conflict with established appropriate uses? Is there any justification for giving priority to the proposed activity over established appropriate uses and would this use affect the balance between established appropriate uses?

11. Would this proposed activity require a commitment of public resources and public facilities for the "exclusive" benefit or use of a person(s)? How could this commitment be justified from the perspective of other park users?

12. What are the long/short term and irreversible effects (both beneficial and adverse) that this special park use could cause to park resources, facilities and/or programs?

13. What NEPA, Section 106 or other compliance is necessary? (See Chapter 6.)

14. Is it possible to mitigate or to repair any adverse effects upon park or adjacent resources, facilities and programs caused by the proposed special park use? If so, would the commitment of any NPS resources be required and does the applicant agree to post a bond to cover such mitigation costs?

15. What would be the difficulties of terminating this special park use activity if once approved?

16. Do circumstances exist wherein the applicant of this request needs to receive special consideration? If so, what would be the criteria for, and effects of, permitting this request and denying others of a similar nature?

17. Is it possible that the approval of this special park use would establish an unacceptable precedent for your park or for other parks? If so, what criteria would allow this specific activity to occur, and not allow similar, but unacceptable, activities to occur elsewhere?

18. Would the approval of this proposed use allow the occurrence of a subsequent activity or event that would be detrimental to the park's resources or programs?

19. Would the proposed activity be consistent with applicable Federal, State or local laws, regulations or plan? If so, have all necessary additional permits been obtained?

20. If otherwise approvable, would this special park use be granted to a different person or organization rather than the one who made the application?

21. What would be the cost to the park in personnel time and financial resources of monitoring the proposed special park use? Could this cost be recovered? (See Chapter 10)

22. Does the applicant have or agree to obtain liability insurance?

Any special park use that is approved must be documented in writing, must have a specific date for expiration, must contain safeguards for the protection of the park's resources and values, and must have an adequate administrative record. (See Chapter 5)

Insert Microsoft Excell file NPS-532 (**FLOW CHART FOR SPECIAL PARK USE INITIAL REQUESTS - page no. 4**) here. To receive this file, send a CCMail message to Tarsha Edwards WASO POPS and ask her to email you a copy of the Excell file. To print this file, save it into MS Excell, print it there and insert the single printed sheet here. If you do not have access to MS Excell , send a ccmail message to Tarsha Edwards WASO POPS and ask her to mail your park one copy.

FLOW CHART REFERRAL

Legislatively Mandated..... Chapter 5
Not Prohibited..... Chapter 5
Specifically Prohibited..... Chapter 3

Right ..... Appendix 1
Water ..... Appendix 4
1st Amendment..... Appendix 3
Native American ..... Appendix 2

Privilege ..... Appendix 1
No derogation, derogation ..... Chapter 4
Appropriate, not appropriate ..... Chapter 4
Public utilities ..... Appendix 5
Agricultural use ..... Appendix 7
Filming ..... Appendix 13
Special Event ..... Appendix 10
Filming ..... Appendix 13
Scientific collection ..... Appendix 6
Research ..... Appendix 6
Military ..... Appendix 11

Insert Microsoft Excell file NPS-531 (**FLOW CHART FOR SPECIAL PARK USE RENEWAL REQUESTS - becomes page no. 9**) here. To receive this file, send a CCMail message to Tarsha Edwards WASO POPS and ask her to email you a copy of the Excell file. To print this file, save it into MS Excell, print it there and insert the single printed sheet here. If you do not have access to MS Excell , send a ccmail message to Tarsha Edwards WASO POPS and ask her to mail your park one copy.

## CONSIDERATIONS FOR RENEWAL REQUESTS

Superintendents must carefully review each permitting instrument for a special park use prior to renewal. A request for renewal should be considered as carefully as if it were an initial application. The review should take place before the existing permit expires, and must ascertain the continuing validity of the original findings as well as the Administrative Record of what has taken place since those findings. The review will determine whether the activity is still mandated or legally permissible, and whether it continues to be appropriate and compatible with the purposes of the park. The Renewal Flow Chart found later in this Chapter should be used to aid in this purpose.

It is possible that activities or uses, which passed the initial evaluation, might not be appropriate. If after careful consideration, it is found that the activity/use is no longer appropriate or compatible, consideration must be given to termination in accordance with the procedures outlined in Section III of this Chapter. (See also Chapter 5)

In addition to subjecting the request for renewal to another review of the questions in Part I of this Chapter, the manager needs to consider the following.

- Is there a proper authorization for the use?
- Is the purpose and/or need for the special use still valid?
- Was the special use granted with the correct permitting instrument?
- Has the nature of the special use changed sufficiently to require different provisions or perhaps even the issuance of a different permitting instrument?
- Have new requirements arisen or conditions changed that point toward the need for additional safeguards or provisions?
- Can the permit be improved to mitigate or eliminate any unacceptable aspects that may have developed?
- Can a final termination date or event be established?
- Is the fee still appropriate? (See Chapter 10)

If, after thorough review, the decision is made to renew the use/activity, this decision process and conclusion should be documented in the administrative record.

## PROCEDURES FOR TERMINATING UNAUTHORIZED OR INAPPROPRIATE SPECIAL PARK USE ACTIVITIES

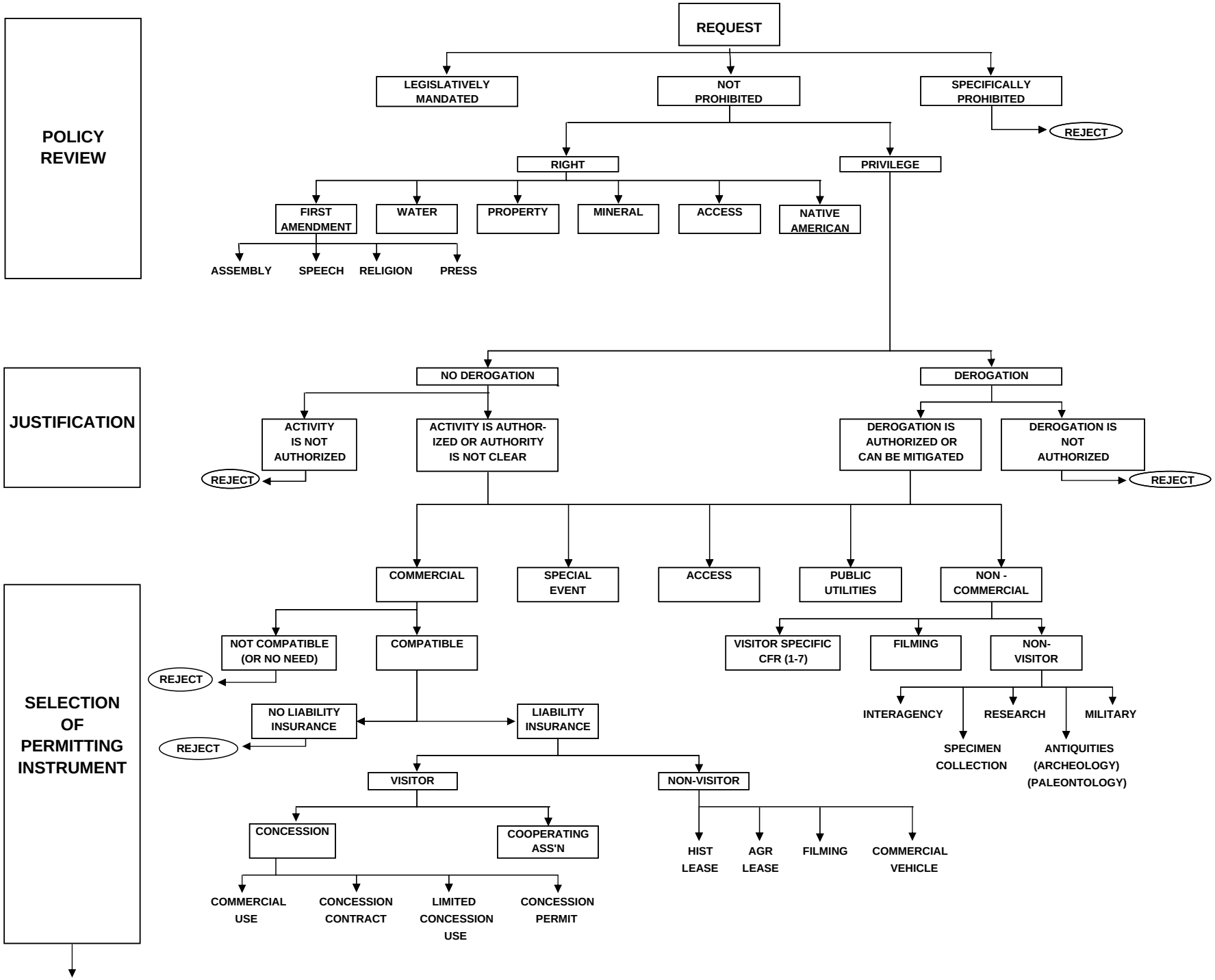
As noted in the second section of this Chapter, park managers should review each permitting instrument for every existing special park use well in advance of its expiration date. If the activity is found to be without legal authorization or is judged to be no longer appropriate and compatible with the purposes of the park, consideration must be given to its termination. Many permits will expire automatically because there will be no reason to request a renewal. In other cases, the passage of time or the changing of circumstances will allow such uses to be terminated with little difficulty.

If the decision to terminate a special park use has the potential for generating controversy or litigation, the park manager should prepare an assessment of consequences in memorandum form. The assessment must include:

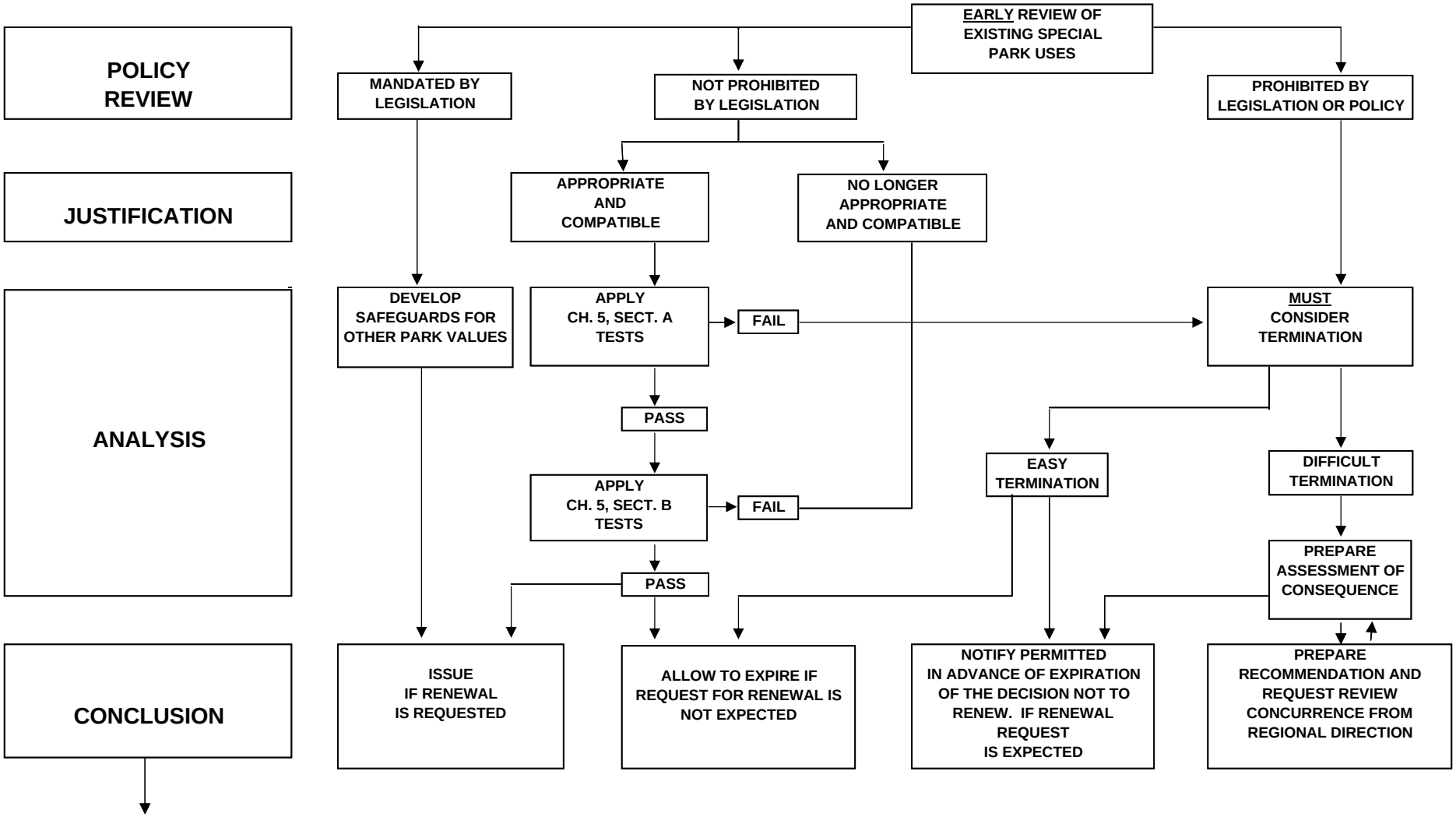
- A historical background of the reason for the special park use; and
- A summary of the special park use and the performance by the permittee; and
- The legal or policy implications of the continuance/discontinuance of the activity; and
- An assessment of the adverse and beneficial impacts of its continuance/discontinuance on park resources, visitor use and other park programs; and
- A listing of legal alternatives which might achieve the desired needs of the permittee and/or the park.

When this assessment of consequences has been developed, the park manager should forward a copy of the assessment with a recommendation for a course of action to the Regional Director for review and concurrence, prior to notifying the permittee of the decision not to renew the permit.

# FLOW CHART FOR SPECIAL PARK USE INITIAL REQUESTS



# FLOW CHART FOR SPECIAL USE - RENEWAL REQUESTS



# PERMIT PROVISIONS

Most of the provisions listed in this Chapter fall into a category we could think of as 'protection', or 'security', or a 'guarantee'. These are all synonymous with the word 'insurance', and something we don't always think of as a condition of a permit but are almost always needed. Depending on the nature of the activity or use, at least one if not all might apply. The superintendent should carefully review each permit request and select those provisions that are appropriate to protect park interests.

## PERFORMANCE BONDS

Performance bonds or deposits are the permittee's guarantee of compliance with permit conditions and reimbursement to the park for damage to resources and/or facilities as a result of the permit-tee's activities. An amount adequate to cover the cost of restoration, repair, rehabilitation and cleanup of the area may be required. The greater the risk of damage to park land or facilities, the higher the bond requirement. In lieu of a surety bond, a permittee may elect to deposit United States Bonds or Notes, a certified or cashier's check, bank draft, money order or cash equal to the amount of the required bond. A personal check is not acceptable in lieu of a bond.

Some special park uses may not require a performance bond. As use becomes more intensive, the possibility of damage to park resources and/or facilities increases. For example, if there is potential for cleanup of litter from a large crowd or possible damage to turf, a performance bond should be required. The amount of this bond should be calculated by estimating the total cost of cleanup and repair for any potential damage. The calculations and estimates used to determine the amount of the bond should be documented as part of the administrative record.

Performance bonds should be deposited in a reimbursable park account that can be used for restoration work associated with the permitted use. Alternately, the permittee may place a bond with a commercial Bonding Agent. The agent will hold the bond until informed by NPS of the successful completion of all terms of the permit. After completion of the permitted use a full survey of damages, including all material and personnel costs, should be made and a copy of that survey sent to the permittee and entered into the Administrative Record. The bond should not be released until all costs have been recovered and damages repaired.

A listing of bonding companies authorized to issue bonds to the United States may be found in Treasury Circular 570. This Circular is issued annually.

## LIABILITY INSURANCE

Liability insurance protects the government from negligent actions by permittees. Insurance in an amount sufficient to protect the interests of the United States may be required as a condition of the permit. A high risk activity, such as fireworks or a black powder demonstration, will always require

liability insurance. Insurance could be waived for a lower risk activity such as a commemorative ceremony. The park staff establishes the amount of insurance required, based on local conditions, the relative degree of risk involved in the purposed use, and industry standards. Liability insurance should be issued in the name of the group, not the applicant. The United States should be listed as additionally insured on the face of the policy. If the insurer requires more specificity, the National Park Service and the individual park may also be listed. The permittee must carry general liability insurance issued by a United States company.

The above language deals with those instances when the Service is issuing a permit to someone else. There are, however, instances when the Service wants to do something that requires a permit from some other entity who may also have a standard format that includes the requirement for liability insurance. An example of such an instance would be if the NPS is sponsoring a special event that requires use of non-federally owned roadways or facilities. The Solicitors office has stated that "as a matter of policy the United States does not purchase liability insurance coverage for the activities of governmental entities. The purpose of liability insurance is to spread the risk of loss. However, given the magnitude of the United States Government, there would be no cost advantage to the Government which could be obtained from purchasing insurance since the risk of lose is already sufficiently spread. Accordingly, the Service may not purchase liability insurance as requested, but should advise the landowner that the United States is a self-insurer."

## PROPERTY INSURANCE

Adequate insurance coverage should be required whenever use of Federal buildings and/or facilities are being made available pursuant to a permit.

## HOLD HARMLESS/INDEMNIFICATION

This is a legal statement intended to be used as a condition of a permit. It states that the Federal government, its agents and employees, cannot be held liable for claims for damages or suits for any injuries or deaths from any cause occasioned by the Permittees occupancy and use of the land included within the permit. Note that this does not mean that we cannot be sued or a tort claim may not be filed. That can be done at any time for any reason.

The Permittee, by agreeing to this condition, assumes full liability when it signs the permit. However, the Permittee's liability only applies to the immediate area described in the permit and does not otherwise excuse the Service from liability. The statement shown below is for use with non-governmental, commercial or private entities.

> This agreement is made upon the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, or death to any person or property of the Permittee, its agents or employees, or third parties, from any cause or causes whatsoever while in

> or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by the Permittee in connection herewith, and the Permittee hereby covenants and agrees to indemnify, defend, save and hold harmless the United States, its agents and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.

This language is modified slightly when dealing with state, county or city governmental entities because of their limited ability to assume liability.

State/Local Government Indemnification

> _____ will indemnify, save, and hold harmless and defend the United States against all fines, claims, damages, losses, judgments, and expenses arising out of or from any omission or activity of the _____, or its employees to the extent allowable under _____ law.

State/Local Government Subcontractors

> To the extent that work undertaken at _____ is performed by other than _____ employees, _____ shall require such person or corporation to:
>
> Procure public and employee liability insurance from a responsible company or companies with a minimum limitation of ___ Million Dollars ($_,000,000) per person for any one claim, and an aggregated limitation of ___ Million Dollars ($ ,000,000) for any number of claims arising from any one incident. The policies shall name the United States as an additional insured, shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. Prior to beginning the __ authorized herein, _____ shall provide the _____ written confirmation of such insurance coverage.
>
> Pay the United States the full value for all damages to the lands or other property of the United States caused by the said person or organization, its representatives, or employees.
>
> Indemnify, save and hold harmless, and defend the United States against all fines, claims, damages, losses, judgments, and expenses arising out of, or from, any omission or activity of the said person or organization, its representatives, or employees.

The three examples of Hold Harmless language above deals with those instances when the Service is issuing a permit to someone else. There are instances when the Service wants to do something that

requires a permit from some other entity who may also have a standard format that includes the requirement for indemnification. An example of such an instance would be if the NPS is sponsoring a special event that requires use of non-federally owned roadways or facilities and the owner of those roads or facility asks the Service to indemnify and hold harmless the landowner. The Solicitors Office has said that "absent specific statutory authority to the contrary, the Anti-Deficiency Act, 31 U.S.C. § 1341, bars Federal agencies from entering into any type of indemnification agreement. Accordingly, the Service does not have the legal authority to accept the proposed indemnification agreement." However, we can point out to the landowner that "pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680, the United States is liable for personal injuries and property damage 'caused by the negligent or wrongful act or omission' of its employees while acting within the scope of their employment 'under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.' Therefore, the landowner need not fear that it would be without recourse in the event of damage to its facilities." The Solicitor has also suggested the following substitute language that would be an acceptable for the Superintendents signature:

> I _____ execute this instrument as the duly authorized representative of the National Park Service, a bureau of the United States Department of the Interior. The liability of the United States, in tort, is governed by the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680.

## ANTI-DEFICIENCY ACT

This statement guards the Service against claims arising from an executed Agreement which would be in excess of the fiscal year appropriation for that agreement.

> Nothing herein contained shall be construed as binding the Service to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the Service in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

## TORT CLAIM PROVISION

This statement is used in lieu of an indemnification requirement when issuing permits to other Federal agencies. While it is directed mostly at the occupation of Service property by the other agency, it might be used for other purposes.

> The (AGENCY) agrees to be responsible for administration and/or payment of any and all claims for property damage or personal injuries which may arise out of the activities authorized by this Agreement in accordance with the provisions of the Federal Tort Claims Act.

## BANKRUPTCY TERMINATION

While this statement is primarily aimed at agricultural Special Use Permits, it might be appropriate under other circumstances and other instruments, depending on the use. Its purpose is to prevent the Park or Park lands from being claimed as an asset or becoming involved in any part of a settlement if the Permittee becomes involved in bankruptcy proceedings.

> All rights of the Permittee hereunder shall terminate upon the filing of: (1) a petition in bankruptcy by or against the Permittee; (2) a petition seeking a reorganization, composition, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act; (3) an assignment for the benefit of creditors; (4) a petition or other proceeding against the Permittee for the appointment of a trustee, receiver or liquidation; (5) the taking by any person of the interest of the Permittee, if any, created hereby or any part thereof upon execution attachment or other process of law or equity.

## REQUIRED CLAUSES

These two clauses are required for legal documents between the Federal government and other entities. It is understood to apply between Federal agencies and therefore does not have to be included in those documents. Note that they already appear as pre-printed statements on the reverse side of the Special Use Permit.

> During the performance of this permit, the Permittee agrees that it will not discriminate against any person because of race, color, religion, sex, or national origin. The Permittee will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, or national origin.
>
> No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this permit or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this grant if made with a corporation for its general benefit.

# MANAGEMENT OF PERMIT FEES

## INTRODUCTION

This chapter provides guidance on how costs associated with special park uses are determined and where funds collected are to be credited. Accounting procedures and internal controls used must assure that funds collected are credited to the proper accounts. (See AOD Collection Procedures and NPS-22 Chapters 8, 9, and 10)

The authority for the NPS to recover and retain costs associated with managing special park uses is found at 16 U.S.C. 3a. Charges established for a special park use under this authority are intended to recover costs associated with managing that activity and not to generate revenue beyond actual cost.

In addition to 16 U.S.C 3a, the NPS is responsible for carrying out the provisions of 31 U.S.C. 9701, the general authority of the Federal government to impose user charges. 31 U.S.C. 9701 provides that such charges will be assessed against each identifiable recipient for special benefits derived from Federally-permitted activities beyond those received by the general public. OMB Circular A-25 (7/8/93) provides implementation guidance for all administrative agencies of the U.S. government. Further guidance for the NPS is found in the Department of the Interior Departmental Manual (DM), Part 346 (Cost Recovery). This authority directs the NPS to impose a user charge for the value of the facilities or lands used, or the services provided. Unless otherwise authorized by law, charges assessed under 31 U.S.C. 9701 are deposited in PWE 891 to the general fund of the U.S. Treasury as miscellaneous receipts.

This chapter does not apply to park entrance or other fees authorized by the Land and Water Conservation Fund Act (LWCFA) 16 U.S.C. 460l-6a, or the Recreation Demonstration Act, PL 104-134 (Fee Demo). In addition, special park use permittees who enter a park for recreational purposes are subject to the same entrance fees, recreation use fees, and recreation permit fees as the general public. However, persons engaging in special park uses that are not recreational in nature are exempt from entrance fees. Examples include but are not limited to: First Amendment; agricultural; grazing; and commercial filming activities; NPS authorized research activities; Federal, state and local government business; and outings conducted by schools and other bonafide educational institutions for educational purposes. This chapter also does not apply to activities managed under the Concession Policy Act (P.L. 89-249, NPS-48), Historic Leases (P.L. 96-515, 36 CFR Part 18), activities managed as Living Exhibits or Interpretive Demonstrations under 16 U.S.C. 1a-2(g), or general leasing under 16 U.S.C. 1a-2(k). The policy guidance in Chapter 5 should be carefully reviewed to confirm that a proposed activity is a special park use.

## EXEMPTIONS FROM CHARGES FOR SPECIAL USES

Exemptions from charges **may be** appropriate when:

- The incremental costs of collecting the charges would be an unduly large part of the receipts from the activity;
- The furnishing of the service without charge is an appropriate courtesy to a foreign government or international organization; or comparable fees are set on a reciprocal basis with a foreign country;
- The permittee is a state, local or Federal government agency or a tribal government;
- The superintendent determines that the use will promote the mission of the NPS or promote the public safety, health or welfare.

Exemptions from charges **is** appropriate when:

- A charge is prohibited by legislation or executive order;
- The requested use involves exercise of a right pertaining to water, property, minerals, access, Native American religious practices, or the rights guaranteed by the First Amendment to the Constitution, including freedom of assembly, speech, religion and press; or

Park superintendents should be aware that exemptions for State and local governments or non-profit groups are not automatic. The permittee must be engaged in an activity designed for the public safety, health or welfare for an exemption to be granted (see OMB Circular A-25). This means that a Red Cross blood drive may be exempted, but a Red Cross banquet for it's workers to celebrate the successful drive would not.

An exemption must be adequately documented in the administrative record to leave no doubt as to the considerations that led to the exemption. Policies followed by the park regarding fee amounts, exemptions and other relevant information should be publicized.

## DETERMINING AND DOCUMENTING COSTS AND CHARGES

The NPS is committed to recovering the cost of providing goods, resources or services to support or facilitate special park uses. In addition, the NPS is committed to recovering a fee for use of NPS lands and facilities.

Permits written for longer than one year require annual review to determine continued acceptability. (See Chapter 5.) One of the factors examined is the continued appropriateness of the costs and fees

charged. If the NPS determines that the fees for a long-term special use permit, or one that occurs one or more times each year, needs to be increased, and the increase will be significant, the superintendent will notify the current permittee and/or the public of the increase during or shortly after the annual permit review on the anniversary date of the permit. The proposed increase will not take effect until at least sixty (60) days after such notification. In addition, whenever the NPS establishes a new permit fee for a use or activity that has been permitted in the park before but never charged a fee, the superintendent will notify the public sixty (60) days in advance of the new fee taking effect.

Generally, costs charged for special park uses are determined on a case by case basis. There are the occasional individual park situations, however, where a recurring activity would logically dictate the establishment of a cost recovery schedule. In such instances, Superintendents will have the discretion to establish a record of documented costs of the same or similar past incidents. From that documented record, the park may then establish a schedule of costs based on similar circumstances. Establishment of such a cost recovery schedule will require the park to request public comment by advertisement in newspapers of local and general circulation in the area, and through the Federal Register. Once comments have been received and/or the normal public comment procedure accomplished, the park may establish an entry in the superintendent's compendium detailing the schedule of costs. This procedure is based and will be instituted upon publication of a general regulation in Part 2 of 36 CFR interpreting the 16 U.S.C. 3a authority for cost recovery, currently being promulgated at the time of the printing of this Release. Until such time as that regulation is in effect, however, parks will continue as they have in the past to determine and recover special use costs on a case by case basis.

The NPS has also considered developing a schedule of standardized permit fees that would apply to all parks Servicewide, but rejected the idea as impractical due to the wide variations in conditions and requirements from park to park.

## Recoverable Costs

Recoverable costs are those costs directly attributable to the use. Costs are recoverable when such costs would not have been incurred if the activity did not take place, or, are necessary, in the judgment of the NPS, for the safe completion of the special park use.

Those costs include, but are not limited to:

- Direct personnel costs, including salaries and fringe benefits. This includes prorated costs for all of the field personnel assigned to the use, as well as all necessary support personnel such as managers and supervisors, dispatchers, maintenance, public health officers and any others involved. The recoverable costs also include any charges for premium pay and all miscellaneous personnel costs, including training.

- Material and supply costs, including miscellaneous supplies and materials, equipment purchase or rental, purchased services such as printing, ADP services, and photographic reproduction, contractual services, postage, etc.

- Costs of official travel associated with the use.

- Utilities costs and other physical overhead.

- Costs for preparation, review and distribution of documentation of environmental and cultural compliance.

- Vehicles and other equipment use costs.

The charge will be governed by its actual cost and not by the value of the service to the recipient. The recoverable costs can be grouped into the following categories:

**Administrative Costs**

All parks should recover administrative costs associated with reviewing and approving or denying, applications for special park uses. Depending upon the complexity of the activity (use), administrative costs may be established and recovered as a standard fee based upon the documented average cost of reviewing applications for simple, repetitive activities, or as a fee established on a case-by-case basis for unique, more complex activities that require extensive review and evaluation.

For most special uses, the park will use the approved application form found in Appendix 12. The purpose of this application is to gather information about the scope of the use, to determine if it will cause lasting harm to park resources (impairment or derogation), or conflict with visitor use. The application fee, if charged, represents the costs incurred by the park in mailing, distribution and initial review to make sure the information supplied is sufficient to form a decision. The application cost is a one time, non-refundable amount submitted by the applicant with the completed application. If applicable, the application is not accepted unless the application fee is enclosed. **Note that the application fee, along with all other fees and charges, are waived if the request is for a First Amendment activity.**

The fee submitted with the completed application, does not preclude the recovery of other costs associated with issuance of the permit. If possible, the permittee should be given an estimate of any additional anticipated costs as soon as possible. Such notification could include a general statement indicating the time frame such additional anticipated costs would be billed to the permittee.

Some special park uses are of such magnitude as to incur considerable additional administrative costs. These costs may include environmental (NEPA), cultural (NHPA) and other compliance and approval, as appropriate, as well as meetings, travel, clerical, public health inspection and

certification, and other costs factors. Administrative charges should reflect an accurate calculation of the actual costs associated with the administrative process of decision and, if approved, preparation of the permit. Ultimately, the administrative costs include all costs to the NPS from the time the first inquiry is received until the permit is signed and issued.

**Management Costs**

The management fee is based on the actual costs incurred by all park divisions involved in monitoring, supporting or cleaning up and restoration after the use. It should include all costs for personnel, all equipment and material charges, and if applicable, the cost of utilities. In cases where actual costs to be incurred cannot be determined in advance, then a condition may be added to the permit that allows the NPS to recover from the permittee all costs associated with managing the use.

**Land and/or Facility Use Fee**

A charge may be established for the use of facilities, resources, or property based upon comparable prices in the area. "Market price" means the imputed rental price for a good, resource or service that is based upon competition in open markets and creates neither a shortage nor a surplus of the good, resource or service. If rental values are applied to land, buildings and equipment, they should include depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines, unless better estimates are available; and, a calculation of the annual rate of return (equal to the average long-term Treasury bond rate) on land, structures, equipment and other capital resources.

The short form method of determining the value for the use of the park land or facility requested by the applicant is to perform a comparison of values with similar lands or facilities in the local area, if applicable. If there is nothing nearby that compares to what you've got, then keep expanding until you find something in the reasonable neighborhood. This does not have to be a formal process, the same ends being accomplished by a few well distributed letters to neighboring facilities asking what they charge for the same thing. The responses to those letters, plus the letters themselves, then become part of the Administrative Record. The same end may be accomplished by appraisal if a more formal statement is required. All costs of that appraisal are borne by the applicant as part of the administrative process. In the majority of instances when the land or facility use fee is charged, the value or amount to charge is determined using the comparison or appraisal method as described.

When a substantial competitive demand exists for a good, resource or service, its market price can be determined using commercial practices, for example:

- By competitive bidding; or

- By reference to prevailing prices in competitive markets for property resources or services that are the same or similar to those provided by the government with adjustments as appropriate,

that reflect demand, level of service and quality of the good or service. Determinations of comparability to establish fees should be reviewed on a regular basis to ensure that they are comparable.

In the absence of substantial competitive demand, the market price is determined by taking into account the prevailing prices for goods, resources or services that are the same or substantially similar to those provided by the Government, and then adjusting the supply made available and/or the price of the good, resource or service so that there will be neither a shortage nor a surplus.

The permittee is responsible for all costs involved with determining the Land and/or Facility Use Fee, regardless of method chosen. This is considered as administrative cost.

**Documentation of Costs and Charges**

Each park will establish and maintain a written record documenting how costs and charges are established for each permit issued. Cost recovery will be based upon actual amounts as determined by the cost recovery records for each permit. A "COST RECOVERY RECORD" (see Exhibit 1) is provided as an example of a format that may be used to itemize and record estimated costs. If the requested use is likely to result in costs being incurred by more than one park division, then a cost recovery record must be maintained by each account and combined into a single park cost projection. Parks should be prepared to articulate all cost, as well as decision factors, in the written record to the permittee.

## COLLECTION AND DISPOSITION OF FUNDS

**Methods of Collection**

Permit costs and charges may be collected prior to, concurrent with or at the time of, or post event or after the use. Like the projected cost and charges, the time and method of collection are determined by the park and must be clearly understood by the permittee. In most instances, the higher the estimated costs of the administrative process, the sooner the applicant should be contacted and a payment schedule established.

Prior Payment

While it is discretionary, the preferred method of payment, especially if the costs are expected to be high, is payment in advance on a bi-weekly basis, if practical, to coincide with the park time-keeper's entering of the time and attendance reports . The object here is for the park not to be placed in the position of having to expend any ONPS funding. Prior payment may be accomplished by the receipt of any of the following: Bond, cashier's check, or, at the park's discretion, personal check, credit card or cash. The bond or check is held secure by the administrative officer and cashed after final tabula-

tion of actual costs and charges, or cashed up front, the amount deposited into a set account which is then charged against on a bi-weekly basis. The permittee is expected to remit any shortfall between the estimated and actual permit fee, and this should be so stipulated in the conditions of the permit the permittee signs. Should the deposited amount exceed the actual costs and charges, the park returns any excess according to standard cash collection and deposit procedures.

If the park is dealing with an involved use or event and required prior payment during the decision stage to cover expenses, and for one reason or another the permit is denied during the decision process, or the applicant withdraws the application prior to issuance of an actual permit, the applicant is still responsible for all costs up to the time of the denial or withdrawal. This point should be made very clearly to any perspective applicant during preliminary discussions.

An additional, separate bond may be required for any part of the post-event clean-up and restoration. This is usually known as a performance bond and may be combined with the cost recovery at the discretion of the superintendent. If a single bond is provided in an amount covering both estimated cost and performance, the permittee may not expect reimbursement of any excess deposited for cost recovery until the use or event is concluded and the performance (clean-up and restoration) period is completed.

Concurrent Payment

Concurrent payment may be accepted anytime just before, during or immediately upon termination of the event. If this method of payment is used, procedures should be established so that the park is prepared to present a statement of costs and charges to the user, and then to mark that statement as PAID. It should be made clear to the permittee that in the event that certain expenses are overlooked or damages discovered at a later date, the permittee will be billed for the remaining amount.

Post Event Payment

Payment after the event is usually accomplished through a Bill for Collection.

## Disposition of Funds

A Request for a Bill for Collection is used to ensure proper tracking and distribution of funds to the correct accounts (See Exhibit 2). These funds are deposited as follows:

1. Funds collected for recovery of NPS costs.

    - PWE 318 - Used for all special park uses as defined here.

These funds must be expended prior to the end of the fiscal year in which the funds are received.

Those funds collected in excess of actual costs and not, for some reason, returned to the permittee, are deposited in PWE 891.

2. Funds collected for Land and/or Facility Use.

- PWE 891 - Used for the revenues collected as land and facility use fees and deposited to the U.S. Treasury as miscellaneous receipts.

In compliance with the requirements of the Debt Collection Improvement Act of 1996, the applicant for a special park use must submit their social security number or Federal tax ID number. This information, gathered during the application stage or during the billing process, will then be transferred to the request for the Bill for Collection (see Exhibit 2) prepared by the coordinator, and submitted to the park budget office for action. This procedure will be followed in all instances unless the park Administrative Officer specifically requests other methods of accomplishing this requirement.

References

16 U.S.C. 3a
31 U.S.C. 3702
31 U.S.C. 9701
OMB Circular A-25, User Charges
Departmental Manual Part 346, Cost Recovery
NPS Management Policies (1988, 8:9)
NPS Recreation Fee Guideline (NPS-22, 3:22, Amendment No. 1, February 1991)
NPS Historic Leasing Act (36 CFR 18)
AOD Collection Procedures

# COST RECOVERY RECORD

The following factors should be considered in calculating the costs associated with the determination, preparation, and administration of special use permits:

| Total Cost Of: | Regular | Overtime |
|---|---|---|
| **1. Personnel (all grades)** | _____ | _____ |
| Visitor Protection | _____ | _____ |
| Interpretation/Visitor Services | _____ | _____ |
| Resource Management | _____ | _____ |
| Maintenance | _____ | _____ |
| Administration | _____ | _____ |
| Other | _____ | _____ |
| **2. Official Travel Associated With Permit:** | | |
| Visitor Protection | _____ | _____ |
| Interpretation/Visitor Services | _____ | _____ |
| Resource Management | _____ | _____ |
| Maintenance | _____ | _____ |
| Administration | _____ | _____ |
| Other | _____ | _____ |
| **3. Conducting an Appraisal or Comparison:** | | |
| Visitor Protection | _____ | _____ |
| Interpretation/Visitor Services | _____ | _____ |
| Resource Management | _____ | _____ |
| Maintenance | _____ | _____ |
| Administration | _____ | _____ |
| Other | _____ | _____ |
| **4. Environmental/Cultural Assessment or Impact:** | | |
| Visitor Protection | _____ | _____ |
| Interpretation/Visitor Services | _____ | _____ |
| Resource Management | _____ | _____ |
| Maintenance | _____ | _____ |
| Administration | _____ | _____ |
| Other | _____ | _____ |
| **5. Supplies, Equipment, Utilities and other Resources:** | | |
| Visitor Protection | _____ | _____ |
| Interpretation/Visitor Services | _____ | _____ |
| Resource Management | _____ | _____ |
| Maintenance | _____ | _____ |
| Administration | _____ | _____ |
| Other | _____ | _____ |

Date:

Memorandum

To: Budget Office

From:

Subject: Request for Bill for Collection (DI 1040)

Please initiate a bill for collection to be sent to:

Name: _____

Address: _____

_____

_____

Social Security/Federal Tax ID Number: _____

Total Amount of Bill: $

Date and description of the services/special event which this Bill covers: _____
_____
_____
_____

Moneys received from this Bill should be distributed as follows:

___ PWE 318 Reimbursable for Special Park Uses .....$

___ PWE 891 General Treasury Misc. Receipts ..... $

Division Chief Signature

_____

## Instructions

This is an in-park form used to simplify the identification and recording (administrative record), source (cause), collection and disbursement of funds received for expenses incurred by the park for services rendered during the decision, approved and management of a permitted Special Event and/or fees for land and/or facility use of park property.

- The description requested should be brief but capable of identifying the event well after the use is concluded, for instance if it is read out months later in court.

- The section on distribution of funds is broken out as follows. The official requesting the Bill For Collection should check and fill out only those line items that apply. Cost shown should cover all expenses and charges for that particular category.

- PWE 318 should show the total of actual costs, if any, incurred by the park. This category is used to deposit and record cost recovery for all special park uses including but not limited to special use permits issued for special events and other activities as well as right-of-way permits.

- PWE 891 deals with those monies going to the general fund of the Treasury and covers moneys collected for special park uses other than for cost recovery. An example of when this category is used would be for a right-of-way permit fee for facility or land use.

- PWE [reserved for filming cost recovery - no year account]

- PWE [reserved for filming location fee - park account 80%]

- PWE [reserved for filming location fee - central account 20%]

In all instances, the park administrative office will prepare and issue the Bills For Collection to the Permittee. Upon receipt of the funds, the issuing officer will separate and deposit the moneys as shown on the distribution section of this form, notifying the appropriate division timekeeper that the funds have been received, and depositing the non-cost recovery amount into PWE 891, as applicable. This system will allow the division timekeepers to then charge personnel or equipment costs against the identified PWE account(s).

## APPENDIX 1 - RIGHTS AND PRIVILEGES

In administering units of the National Park System, it is useful for superintendents to keep in mind that special park uses may be classified as either the exercise of a right or a privilege. Generally, privileges arise as the result of the exercise of discretion provided by a statutory authorization. (See Chapter 3.) In other words, a superintendent is provided with the discretion in such cases either to permit or to deny a specific special park use. Rights, on the other hand, which may arise under the Constitution, a treaty, or some other legal entitlement, such as a property right, generally do not allow the park manager the discretion to deny the special park use that the exercise of the right provides for.

Although the exercise of a right allowing for a special park use may not be denied, under most circumstances it may be managed. (See Appendix 3.) Rights arising as a matter of law depend in each instance upon what the law or legal document provides. For example, there may be established by statute a right of access to inholdings within a particular park unit. The extent of that right and the amount of control that the superintendent may have over the exercise of that right, may be dependent upon the specific provisions of the statute or other legal instrument creating the right ( in most instances, an encumbrance in the Deed of acquisition).

Lands are normally acquired subject to existing encumbrances serving public needs. The encumbrances are usually found in the deeds as easements or provisos. The rights provided in such preexisting encumbrances are honored unless there is an acquisition of the right. National Park Service regulatory tools, such as rights-of-way, are not required for such existing encumbrances. This, however, does not release the Service from the responsibility to assure that protective measures are in place by use of memoranda of agreement, letters, or contracts with the owners of such encumbrances. Where an encumbrance would interfere with park objectives, it may be acquired or relocated at government expense.

The specific provisions of an easement across park lands determines the extent to which the superintendent of the park area can control or regulate the activities that may occur on the encumbered lands. In addition, under some circumstances, property rights such as scenic easements or fee simple ownership may be acquired to extinguish those rights. The same would apply to a right provided in a treaty. The extent to which a superintendent may control or regulate the exercise of that right depends upon the language of the specific treaty.

In summary, one of the initial decisions made by the superintendent is the determination that a request for a special park use is an entitlement (right) or a privilege. If it is a right, the superintendent should consider what the terms of that right are, to understand the extent to which that right may and should be regulated. In consideration of a privilege, the superintendent has the additional task of determining whether the activity will be allowed. If so, then the controls under which the activity will be allowed must be addressed. More detailed information concerning specific rights should be referred through the Regional Office to the Solicitor.

## APPENDIX 2 – NATIVE AMERICAN RELATIONS AND USES

This Appendix describes policy and procedures for government-to-government relations with Native American Tribal Governments and Native American uses. The executive memorandum on Government-to-Government Relations with Native American Tribal Governments describes the unique relationship that the United States Government has with Native American tribal Governments.

> The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statues, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.

Secretarial Order 3175 on Departmental Responsibilities for Indian Trust Resources directs Federal agencies to develop procedures for carrying out activities with Native American tribal governments on a government-to-government basis. Directors Order 71 will provide Service wide guidance. The National Park Service is required to consult with Federally recognized Native American tribes, including Alaskan native villages, on a government-to-government basis which generally means formal consultations between officials of tribal governments and park managers.

Members of Federally recognized Native American tribes may have certain rights regarding access to and use of cultural and natural resources in units of the National Park System. Park enabling legislation, treaties, and pertinent court decisions will provide the base of information for park managers regarding such rights.

National Park Service Management Policies define the term "Native American" to include American Indians, including Carib and Arawak; Eskimo; Aleut; the Pacific Island Native peoples, including Native Hawaiians, Native Samoans, Chamorros, and Carolinians; federally and state recognized tribes and those Native Americans who are defined by themselves and known to others as members of named cultural units that historically have shared a set of linguistic, kinship, political, and other distinguishing cultural features. It should be noted that “Native American” in NPS Management Policies refers to all indigenous people associated with units of the National Park System, not just Federally recognized Native American tribal governments

The American Indian Religious Freedom Act (42 U.S.C. 1996) states that "henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right to freedom to believe, express and exercise the traditional religions of the American Indians, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites." This statute does not create additional rights or change existing authorities, but as a matter of policy in keeping with the spirit of the law, the National Park Service will be as unrestrictive as possible in permitting

Native American access to and use of traditional sacred resources for customary ceremonial purposes.

Executive Order 13007 on Indian Sacred Sites directs Federal agencies to accommodate access to and use of sacred sites by American Indians for ceremonial purposes. Director's Order 72 will provide Service wide guidance. The Service will not direct visitor attention to the performance of religious observances unless the Native American group so wishes.

Members of Native American tribes or groups may enter parks for traditional non-recreational activities without paying an entrance fee.

NPS Management Policies stipulate the following three principles to guide relations with members of Native American tribes:

> NPS general regulations on access to and use of natural and cultural resources in parks will be applied in an informed and balanced manner that is consistent with park purposes and does not unreasonably interfere with Native American use of traditional areas or sacred resources or result in degradation of park resources.
>
> Effective consulting relations with potentially affected Native American tribes or groups will be established and maintained.
>
> Management decisions will reflect knowledge and understanding of potentially affected Native American cultures and people, gained through research and consultation with the potentially affected groups.

Some legislation, for example, the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act, also require consultations with Native Hawaiians and traditionally associated or culturally affiliated American Indian groups. Refer to Management Policies for further information.

References

16 U.S.C. 3104 Alaska National Interest Lands Conservation Act.
25 U.S.C. §3002, Native American Graves Protection and Repatriation Act.
42 U.S.C. §1996, American Indian Religious Freedom Act.
42 U.S.C. §4332, National Environmental Policy Act.
36 CFR §2.1, Preservation of Natural, Cultural and Archaeological Resources.
40 CFR 1500-1508, National Environmental Policy Act.
NPS Management Policies 1988, Chapter 5: Cultural Resource Management and Chapter 8: Use of the Parks.
NPS-28, Cultural Resources Management, Release Number 4, 1994.

NPS-77, Natural Resources Management, Release Number 1, 1991.
Secretarial Order No. 3175, Departmental Responsibilities for Indian Trust Resources, signed by Secretary of the Interior Bruce Babbitt, November 8, 1993
Executive Memorandum, Government-to-Government Relations with Native American Tribal Governments signed by President William J. Clinton, May 3, 1994
Executive Order No. 13007, Indian Sacred Sites
Director's Order 71, Relationships with American Indians and Alaska Natives (in draft, to be published in early 2000)
Director's Order 72, Indian Sacred Sites (in draft, to be published in early 2000)

# APPENDIX 3 - FIRST AMENDMENT ACTIVITIES

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Freedom of speech, press, religion, and assembly are rights, not privileges. However, the courts have recognized that activities associated with the exercise of these rights may be reasonably regulated to protect legitimate government interests. Therefore, the NPS may regulate such aspects of first amendment activities as the time, place and manner where they are conducted in order to protect park resources. The National Park Service (NPS) has done so in regulations codified in *36 CFR 2.51 and 7.96(g)(4)(iii)* concerning public assemblies and meetings, and *36 CFR 2.52 and 7.96(k)* concerning the sale or distribution of printed matter. It should be noted that it is the conduct associated with the exercise of these rights that is regulated, and never the content of the message. There are also First Amendment issues associated with photography and filming activities. Please refer to *36 C.F.R. 5.5* and Appendix 13 Filming and Photography.

Another aspect of the First Amendment is referred to as the establishment clause, which prohibits the government from supporting or promoting a particular religion, religious view, or religious organization. However, it does not prohibit the National Park Service from permitting religious activities in park areas as it would permit the exercise of any other First Amendment activity.

Related to issues of the exercise of First Amendment activities is the principle of equal protection guaranteed by the due process clause of the Fifth Amendment. In other words, to the extent any particular activity is permitted, the principles of equal protection would prevent the exclusion of similar First Amendment activities. Therefore, any restraints imposed must be administered even-handedly to all groups and individuals for activities similarly situated. The NPS may not permit one group to engage in the conduct while prohibiting others under similar circumstances. Park managers should be particularly careful not to favor organizations whose "message" they privately support or agree with or which they are familiar or with which they are personally associated in authorizing activities by the organization within units of the National Park System.

Political events may be First Amendment activities or special events. One that constitutes a First Amendment activity is managed and regulated under *36 CFR 2.51 or 36 CFR 7.96(g)(4)(iii)*; one that constitutes a special event is managed and regulated under *36 CFR 2.50 or 36 CFR 7.96(g)(4)(vi)*. Typical examples of political (First Amendment) events managed under *36 CFR 2.51* include public demonstrations, assemblies, or other forms of public expression of opinions and views. Examples of political (non-First Amendment) events would be political fund raisers and other invitation-only political events not normally open to the general public. In addition to all the

normal considerations involved in allowing special events in the parks, the decision to allow the event must take into consideration whether or not the activity would be permitted if requested by any other group.

The sale of merchandise in the parks is prohibited by 36 CFR 5.3, except for the sale of printed matter as defined in 36 CFR 2.52, and Special Directive 95-11 or in 36 CFR 7.96(k). The sale of food in the parks is allowed, when permitted and managed under a permit and is not in conflict with an authorized concession. The sale of all other merchandise on parkland, including but not limited to T-shirts, clothing and arts and crafts, is prohibited.

When the requested use is a right involving access to park land for the exercise of First Amendment rights including freedom of assembly, speech, religion and press, the superintendent will issue a permit without any requirement for fees, cost recovery, bonding or insurance. The solicitor has ruled that to charge or require bond or insurance for these types of activities might be beyond the means of some applicants and prohibit them from exercising their rights. This would constitute an infringement of rights and be considered a form of restraint on the exercise of those rights.

References

*36 CFR 2.50*
*36 CFR 2.51*
*36 CFR 2.52*
*36 CFR 7.96*
*36 CFR 5.5*
*NPS-53, Appendix 16*

## APPENDIX 4 - WATER RIGHTS

The circumstance can arise where special park uses may involve the use and/or conveyance of water. Water law, both federal and state, govern the manner, timing, and amount of use any party, including the National Park Service, may make of any water body, including both surface and ground water. The inability to comply with appropriate law may make a special park use inappropriate.

General direction on the use of water and establishment of the right to use water is provided in the NPS Natural Resources Management Guidance. The special use of water by Concessionaires generally falls under the aegis of the federal right. In those states where the NPS right is recorded, concession water use should be defined and claimed by the United States.

In addition to the laws generally governing the use of water, policy and additional laws specific to the National Park Service govern the sale or other form of disposal of water from federal lands administered by the NPS. The general thrust of these laws and policy is that the NPS has no "excess or surplus water" and that water cannot be sold, "given away", or otherwise provided for non-NPS use except under a very limited set of circumstances.

Specific guidance on the **Sale or lease of services, resources, or water available within an area of the National Park System** is provided in Special Directive 78-2. This special directive provides interpretation of the intent of Public Law 91 - 383 (84 Stat. 827) (amended by PL 94 - 458).

The sale or lease of water, if it does occur, cannot result in the permanent transfer of a water right to the permittee. All rights in and to such water must remain with the United States. Failure to comply with this guidance could lead a permittee to believe that the NPS, through its field officer, has authority to dispose of this property right. This would not be true.

Specific guidance on the use of water for mining claims is provided in 36 CFR Chapter I, Part 9, Subpart A, which implements the Mining in the Parks Act (16 U.S.C. § 1901 et. seq.).

When land is acquired by purchase, donation or otherwise, the NPS also may acquire water rights perfected under state law. Similarly, lands being acquired by the NPS may be encumbered by rights to divert, use or transport water within or across the parcel. Water rights which are acquired with land and those which are associated with park resources, and staff and visitor use must be protected within the context of state water law and U.S. Supreme Court Decisions. State water statutes all differ to some degree and, furthermore, are continually changing. For these reasons and others, the NPS Water Resources Division has a Water Rights Branch to assist the field on water rights matters. Such assistance is provided only with the concurrence of the Office of the Solicitor and, when appropriate, the Department of Justice.

It can happen that the NPS acquires a water right and subsequently determines that such a right is no longer needed for proper park management. This could lead to a decision to discontinue the use of

such a right because of the costs of maintaining the transport facilities, ditch association dues, or other reasons. However, field-level action on such a decision would not be appropriate because in many states the continuous use of a water right is required as a condition of ownership. Thus a failure to use the right might create a presumption of abandonment under state law. This would likely create a legal entanglement because abandonment and prescription do not apply against the United States. The appropriate course of action would be to use the appropriate bureau protocols for the disposal of surplus government property.

Park managers should be aware that holders of rights-of-way for water transmission facilities, such as ditches and pipelines, located on NPS land or lands to be acquired by the NPS will probably have retained rights to enter upon park lands to perform routine maintenance on those ditches and pipelines. (This is not to imply that a water right, in and of itself, creates or implies a right of entry upon Federal land.) The scope of those rights should be explored with legal counsel before the right-of-way holder begins such maintenance.

Assistance is available from the Water Resources Division, Water Rights Branch for questions about the use of water for special park uses.

References

NPS Management Policies 1988, 4:17
NPS Special Directive 78-2
Public Law 91 - 383 (84 Stat. 827)
Public Law 94 - 458 (90 Stat. 1939)
36 CFR Chapter I, Part 9, Subpart A
Act of September 28, 1976 (16 U.S.C. § 1901 et. seq.) (Mining in the Parks Act)

# APPENDIX 5 - RIGHTS-OF-WAY

A right-of-way (ROW), as used within the context of this Appendix, is a permit issued by the National Park Service to a third party to pass over, under or through NPS property. A ROW permit is a discretionary and revocable document and, unlike a deeded easement or fee simple ownership, does not convey or imply any interest in the land. In addition, a ROW permit may only be issued under certain, stringent circumstances. The NPS is under congressional mandate not to allow any use of NPS land that would impair or be a derogation of the values and purposes for which the park was authorized or be incompatible with the public interest, except when authorized by Congress.

## Authority

**There must be specific authority in the law allowing the type of use for which a ROW is requested.** Authority for a utility ROW through parks is found in 16 U.S.C. 5 for telecommunications; and 16 U.S.C. 79 for electric power, telephone and telegraph, and a wide variety of water conduits, dams and reservoirs (including sewer); or park-specific legislation.

Authority for highways that are part of the Federal Aid Highway System is found at 23 U.S.C. 107(D), 138 and 317. Authority for permitting access to inholdings in Alaska park units is located at 16 U.S.C. 3170(b) (ANILCA) 1110(b). (See Director's Order and Reference Manual 87 for policy and procedures for non-NPS roads in parks.)

Authority for roads and utilities *constructed for and owned and operated by the parks and/or its concessions*, is found at 16 U.S.C. 1-3 and 8. This authority uses the same tests for derogation of values and purposes, and compatibility with the public interests.

Examples of uses for which there are **no general authorities** are **roads that are not a part of the Federal-Aid Highway Project System** (National Highway System), and **oil, gas or other petroleum product pipelines.** Oil and gas lines that serve NPS facilities only may be authorized under 16 U.S.C. 1-3, but these lines may not be extended to serve any other purpose. **If authority for the requested use is not found in the general legislation or other sources, the park must deny the use.** (See 30 U.S.C. 185(b))

Should an unauthorized use already exist, and the park discovers that it does not impair or is not in derogation of park resources, values or purposes, it is not incompatible with public interests, and there are no practicable alternatives to being on NPS land, the park should contact the appropriate regional program manager for assistance.

Except as specifically provided by law or policy, there will be no permanent road, structure or installation within any study, proposed, or designated wilderness area. This includes the installation of utilities. (See the Wilderness Act 16 U.S.C. 23). The NPS will not issue any new right-of-way permits or widen or lengthen any existing rights-of-way in designated or proposed wilderness areas.

## Policy

A ROW permit is the required instrument for use in documenting and permitting utilities and other uses of NPS land within the National Park System. This includes those utilities not owned by the NPS but serving NPS and/or concession facilities. NPS owned utilities do not require a ROW permit. A ROW permit is not required for those instances when the specific use is authorized by property rights, such as a deeded easement, or by park-specific or other legislation when the legislative language is so written as to have the same effect as a deeded easement.

All parks will use 16 U.S.C. 79 as the authority to permit utility ROW for all electric, telephone and telegraph lines, and for canals, ditches and other water conduits, including sewer lines. 16 U.S.C. §5 will be used for telecommunication and other forms of communication transmitting and receiving structures and facilities. This would include cable television lines.

**As a general rule, and where and when possible, all new utility lines in parks will be placed underground and in conduit**. While economic factors must be considered, undergrounding utility lines should be done by directional boring rather than trenching. For especially long lines or other factors that would make directional boring impractical, the superintendent may allow trenching to occur in preference to the installation of overhead lines. All parks with existing overhead utility lines should attempt to have those lines placed underground as the opportunity occurs. These lines should also be directionally bored and placed in conduit where and when possible.

## Regulations

NPS general regulations regarding ROW permits are located at 36 CFR Part 14. The regulations for NEPA 102 and NHPA 106 compliance are located at 40 CFR Part 1500 and 36 CFR Part 61. Alaska-specific regulations on ROW's and NEPA compliance cost recovery are located at 43 CFR Part 36 and Subpart 2808.

## The Right-of-Way Permit

The format for a ROW permit has been standardized and approved, and should be used by all parks originating these documents. Examples of a fee and non-fee ROW permit using the approved templates are attached here as Exhibits 4 and 5.

The standardized permits have been approved by the Solicitor's Office and when used, do not require further review by their office. Changes to the standardized permit WILL require at least consultation with your solicitor if not their actual review and approval. Copies of the approved fee and non-fee ROW templates may be obtained from your regional special park use coordinator.

If the ROW permit being submitted for review and approval required NEPA and/or Cultural resource compliance, the park will include copies of the compliance documents (Environmental Review and Compliance Form, Environmental Assessment, Environmental Impact Statement, Finding of No Significant Impact, and Assessment of Actions Having an Effect on Cultural Resources, as applicable) with the package. (See Chapter 6.) In all instances, the originals of the compliance documentation should remain in the park.

All *new* ROWs must be submitted to the Regional Director for review, approval and signature. If the permit is a amendment, conversion or renewal of an existing permit, which has been reviewed at the Regional level, it will be signed by the Superintendent.

Undocumented utility lines exist in the parks. A line that has been undiscovered for some time would, to a certain extent, be treated as a new permit. If the park decides to allow the line to remain, a ROW permit will be prepared and submitted to the Regional Director for review, approval and signature.

## Conversions

Special Use Permits or other documents will not be used to authorize utilities within NPS areas, including those which serve the park. All existing special use or other types of permits issued for this purpose will be converted to ROW permits as they expire or sooner at the convenience of the park..

## Right-of-Way Amendments and Renewals

Amendments are normally used to document small or minor changes to the use described, or the stated conditions that regulate that use. Examples of such changes would be: If the company wanted to add an additional line within an existing and already permitted trench, or request periodic permission to tap into the line for testing purposes. If a major change is contemplated, an amendment may not be appropriate and the park should consider writing a new document. An example of a major change would be if a company wanted to change the route of existing lines to an area not already under permit and different from the existing route, or possibly perform a major upgrade in the nature of the lines.

A ROW permit may be amended at any time for several reasons. Amendments may require NEPA and other compliance. The Amendment is used to renew a ROW. Amendments are executed by the Superintendent. See Exhibit 7 for an example of a completed Amendment.

## Rights-of-Way for Roads

A 1991 decision by the Washington Solicitor has determined that the proper document to use when NPS lands are needed for roads is a Highway Easement Deed. See Directors Order and Reference Manual 87.

## PROCEDURES

The following information concerns procedures for issuing right-of-way permits and is meant to give step by step how-to-do-it assistance to right-of-way coordinators at the park level.

### Administrative Record

The right-of-way process starts with the initial request for a new right-of-way, or the expiration and request for the conversion of an existing document to a right-of-way permit. This initial document will become the first page in an administrative record that must be established and maintained for each right-of-way permit. The administrative record will record the step by step managerial decision process as well as all applicable documentation as the right-of-way permit proceeds from inception to final completion. This file will also contain amendments, notes, references, and renewals as they occur.

### Initial Steps

The right-of-way process starts when the park either receives a letter from a utility company requesting the use of park land or, in the case of renewals, notifies a company when its current document allowing a use is about to expire.

The Application The information needed by the park manager to make at least a preliminary evaluation of a new use is usually obtained from a formal application. Park managers shall require applications for right-of-way permits be submitted on a Standard Form SF 299. A copy of this form is attached here as Exhibit 8. It is provided without headers or footers to allow duplication for immediate use. The information requested on the form may not be all that is needed for park managers to arrive at a decision on accepting or denying the application. Additional information may be requested from the applicant as necessary.

The SF 299 is a multi-agency form and the reference to "Transportation Systems" is typically for use by the other agencies. The SF 299 may also be used for right-of-way permit renewals or conversions from other inappropriate instruments as needed.

The Drawing As part of the application process, and in addition to or in place of the requirements on the SF 299, the applicant shall submit an original and two copies of a metes and bounds drawing that shows park features and the route of the proposed line. The original and one copy remain in the park. The remaining copy will be attached to the permit sent to the Regional Office for approval and signature. See Exhibit 1 for recommendations on what the drawing should include.

Compliance Documents Environmental and Cultural compliance is a required preliminary step in the right-of-way permitting process. In Alaska, an evaluation of the effect on subsistence uses is also required (See Appendix 15). An Environmental Assessment, and especially in historic areas, a Cultural (106) Assessment, will be prepared (by the requester of the use or the park, park's choice) and submitted to the park for approval. This holds true in every instance when the resource is disturbed or affected and the use is not covered under a categorical exclusion. The park must have an approved environmental/cultural document, or a statement (probably a FONSI) citing one of the categorical exclusions. These statements or documents must be filed in the individual permit administrative record.

Requirements contained in Regional Office approvals of the compliance documents should normally be inserted in the final ROW permit as stipulations or required special conditions to control activities during the construction or operational phase of the project.

Preliminary Requirements Checklist Once these decisions are made and approvals or denials received, the park manager should then have made a determination, and/or have a written document in the administrative record, for each of the following items:

- A managerial finding that the activity will not be an impairment or derogation of park resources or values, and is not incompatible with the public interest.
- There is a specific law that authorizes the ROW.
- The park determines that the use is a categorical exclusion, or has an approved EA with a signed FONSI (or EIS as appropriate) from the regional office for NEPA compliance.
- The park has received Section 106 approval from the regional office for cultural compliance as applicable.
- In Alaska, park managers have evaluated the effect on subsistence uses in compliance with ANILCA 810.
- The park has received a satisfactory metes and bounds drawing describing the proposed ROW.
- The park has determined that the applicant is or is not exempt from fees and/or charges, and exactly what the fees and charges will be.

Once all of these preliminary requirements are satisfied, the park can move on to the next step, actual construction of the draft right-of-way permit.

**Constructing the Permit**

The right-of-way permit number will appear in the upper right corner of the first page of the document. The number will be constructed so that every permit written in a park will have its own unique number. To accomplish this, the permit number will be a four part alpha/numeric combination constructed as follows:

The first part will be a two letter designation indicating the type of permit, in this case **RW** for right-of-way. This is done mostly for quick reference but is still considered a part of the number.

The second part will be the four number organization code for the park. For example, Natchez Trace Parkway would be **5570**, Big Bend would be **7130**, and Redwoods would be **8480**. This is done exclusively for the benefit of the appropriate regional office to aid in tracking the individual park permits.

The third part will be the last two digits of the calendar year in which the permit is or will be signed, for example **99**. This is done to help track when the permit was initiated.

The last part will be the three digit suffix exclusive to the next consecutive permit issued in that park. For example, the first permit issued would be 001, the fourth would be 004, the twenty ninth would be 029 and so on. The main purpose for this will be to assign a permanent and unique number for each permit written in that park. Here are some examples. The number for the second permit issued in the park (in this case let us say a right-of-way issued by Redwoods) in CY 1999 would be: **RW 8480-99-002**, and the last permit issued in the park during that calendar year, in this case another right-of-way, was: **RW 8480-99-029**. If the first permit issued during CY 2000 happens to be a right-of-way, the number would be: **RW 8480-00-030**, the next consecutive unique number for that park.

These numbers apply to newly written permits, either from a new request for a use or conversions from other types of permits. Amendments, renewals or other actions taken for existing permits would not normally be reason to write a new permit and therefore not require a new number. Each existing permit would therefore retain its original and unique document number. It is conceivable that once assigned, a document number could, through continual renewals or amendments, continue in effect and existence for the life of the park.

If the permit represents a conversion from another type of permit to a right-of-way, it should reference the replaced permit number(s) by placing the following immediately under the ROW number:

**RW 8480-00-031**
**Replaces SUP 8480-88-0014**

The WHEREAS Statements on the first page are used to first identify the parties to the agreement and the specific use authorized, then continue with the same type statements listing the authorities and findings that allow that use.

The Authorities Every use must cite the U.S. Code Statue specifically authorizing that use. The authorities will be listed in the exact order shown in Exhibits 4 and 5. The majority of rights-of-way requested through the parks are authorized under 16 USC §79 or 16 USC §5. Parks will cite their own enabling legislation as found in their section of 16 USC.

The Legal Description is a written version of the compass bearings, distances and other vital information that describes the land the park is allowing to be used. It should be composed directly from the metes and bounds drawing submitted by the requester, tracing the use from the point where the line(s) enters to where it leaves the park. Refer to Exhibit 1 for specifications. See also 36 CFR Part 14 for regulatory requirements.

The normal right-of-way allows sufficient room for the line, plus extra feet on both sides of the line for maintenance and operation. While there are several ways a description of this area may be done, the two normally accepted are as follows:

The Standard ROW Description This is a metes and bounds description tracing the perimeter of the right-of-way. It describes all of the land the park is including in the right-of-way. Using this method, you are not describing the actual centerline itself, but rather the entire area of the right-of-way (XX feet wide by YY feet long) including the extra room you have granted to allow space for installation and operation. The described area winds up looking like a rectangle with the actual line running through the center of it.

A Centerline Description This is a metes and bounds description of just the line itself as it travels through the park. The preliminary, opening statement must include how many feet to either side of the described centerline you are allowing for the actual right-of-way. The legal descriptions in Exhibits 4 and 5 show examples of this preliminary language describing the amount of land to either side of the centerline.

While either method is acceptable, both have advantages and disadvantages. If the park has or is going to have a functioning GIS system, and is going to include rights-of-way as an overlay, the first method is preferable because of its accuracy. However, the standard right-of-way requires an official survey that might become expensive, especially if the area covered is extensive, has difficult terrain, and/or there are several lines to be done. A centerline drawing can be done by the Permittee engineers using county base maps, a brunton compass and a measuring wheel. Regardless of which type of description is used, the Permittee is responsible for all costs associated with generating the required drawing.

In some instances, the requested use is for multiple rather than a single line. If the lines are to be placed parallel with each other and in the same trench, or all within the "standard" width decided

upon by the park, they could be described as multiples of a single line and charged by the line. If the lines are more widely separated they may be treated as different parcels of the same permit. Additional lines, added at a later date, would require the company to submit new compliance documentation and pay additional fees and charges for the additional line(s).

Park managers should ground-truth legal descriptions submitted by applicants where possible or practical.

The Effective Date states the term of the Permit. Although the term of a right-of-way might vary depending on type, the permit should not be written for longer than ten years. While the NPS has the authority to issue a right-of-way for longer periods, management plans and changing land values currently dictate otherwise. Exceptions to this practice will be dealt with on an individual basis at the regional level.

The Fees For Use and Occupancy and Reimbursement of Costs. In general, the fee or non-fee determination is made depending upon the Permittee and the use. 36 CFR Part 14 contains regulations on Fees and Reimbursement of Costs. See Exhibit 2 and Chapter 10 for a description of how to determine Fees and Costs.

Under current legislation, the application, administrative and management costs are retained in the park. The fee for use and occupancy is sent to the general fund. While it is recognized that the present system does not offer great incentive to collect these fees, this should still be done for several reasons. The establishment and collection of these fees and charges will assure that holders of right-of-way permits pay all costs incurred by the NPS and be assessed full value for their use of public lands. It is the most equitable method of ensuring that all users of park land are charged equally for similar uses. It will also serve as a deterrent to an applicants turning to the NPS for a low or no cost right-of-way rather than exhausting all other alternatives first. Cost recovery figures will be based on actual costs. Fees for land or facility use are based on appraised value or comparability surveys.

The Terms and Conditions of the permit must protect and provide for the prevention of impairment or derogation of park values and resources. The terms and conditions found at 36 CFR Part 14 will be used in all permits (boiler plate) as applicable. In addition, each park should develop their own set of park specific conditions unique to their area and needs. Specific conditions might have to be added or deleted, depending on the situation.

The Hold Harmless Clause has been approved by the Washington solicitor and will be used in all ROW documents written for commercial companies (See Exhibit 4 Condition 23). Documents written for State, County and local government agencies might have to modify this statement (See Chapter 9). This however, will be done on a case-by-case basis on the advice of your Regional Solicitor's office. Rights-of-way written for other Federal agencies do not normally need this clause. Instead the park will substitute language taken from the Tort Claims Act (28 U.S.C. 2671).

> The (agency) agrees to be responsible for administration and/or payment of any and all claims for property damage or personal injuries which may arise out of the activities authorized by this Agreement in accordance with the provisions of the Federal Tort Claims Act.

Other Clauses The Terms and Conditions section is also where the park should insert other standard clauses such as an insurance clause, a performance bond clause, an Anti-Deficiency Act clause, a bankruptcy clause, and other similar language as needed. See Chapter 9 for examples.

The Signature Page The final page of the right-of-way permit should be restricted to the WAIVER NOT CONTINUING and the signature/date statements. This placement has several advantages, not least of which is use of this all-important page as a top or final sheet for the administrative record. In addition, this fully signed page is all that is needed to send to the Regional Office as proof of a fully executed document rather than another entire copy of the permit, should the region require and retain separate records.

Because this page might very well stand by itself, the right-of-way permit number should be inserted into the "IN WITNESS WHEREOF" statement as shown in Exhibit 4.

**Powerlines and Raptors**

The U.S. Fish and Wildlife Service (FWS) has drawn attention to a serious problem in some areas associating a threat to large raptors with powerlines. Raptors are attracted to powerlines as they serve as perches for hunting, resting, feeding and for territorial defense. Some powerlines are constructed with conductors and groundwires close enough together that raptors can touch them simultaneously, causing electrocutions. These electrocutions tend to effect the larger birds mostly in non-forested areas (grasslands, shrub-lands, park-lands). The larger birds are effected more because they have a greater likelihood of touching two components at the same time, and these electrocutions tend to occur more frequently in non-forested areas because the birds have no other options for perches.

If the park has large raptors and overhead power lines, walk the lines to search for evidence of raptor mortality due to collisions with the lines and electrocution. If the park finds evidence of mortality by probable electrocution, the park should meet with the utility to explore some of the existing mitigation methods. Many utility companies and some parks are already aware of these problems and have taken steps to mitigate them.

If the park does find evidence of raptor mortality, meets with the utility but the company refuses to agree to mitigating measures, the park should preserve the electrocuted birds as evidence and, at some point, if circumstances warrant, consider criminal sanctions under the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act or the Endangered Species Act. Those Acts might come into play in the event the park determines the cause of death to be electrocution and cannot negotiate a reasonable solution with the utility company. At that point, the regional law enforcement

specialist/special agent and solicitor should be asked to assist the park. The park may also contact the FWS special agent for that area for coordination, additional support and advice.

If Parks are writing or updating a power line right-of-way permit and have large raptors either in residence or as a stop on their flyway, they are encouraged to add an additional condition in their permit saying: "Utilities constructing or operating overhead powerlines will adhere to raptor safe guidelines as identified in SUGGESTED PRACTICES FOR RAPTOR PROTECTION ON POWERLINES: THE STATE OF THE ART and MITIGATING BIRD COLLISIONS WITH POWERLINES: STATE OF THE ART IN 1994." These works may be obtained through the Edison Electric Institute.

## Conversions

Conversions of or permits for existing utility lines, with no changes to the line or use, are excluded from NEPA and probably cultural requirements unless the activities prolong existing or create new adverse environmental and/or cultural impacts. Right-of-way permits representing a conversion from another document are submitted to the Regional Office for review and approval. Upon Regional approval, the right-of-way permit is sent out for company signature and returned, then signed by the Superintendent. See Exhibit 3 for Sequence of Events.

Undocumented utility lines, while not the normal occurrence, do exist in the parks. A line that has been there undiscovered for some time would, to a certain extent, be treated as a conversion because, even lacking a permit, it is an existing fact and has probably been that way for some time. If the park decides to allow the line to remain, a right-of-way permit will be prepared and submitted as described above for final execution by the Superintendent. Caution is advised when dealing with these obviously old but newly discovered lines. There is a chance that the utility line was in place prior to the park obtaining ownership of the property. To find this out the park should check it's deed file. If the line is mentioned in the deed of acquisition as an encumbrance on the land being sold to the NPS, it is a deeded easement and does not require a row permit. If the line is not mentioned in the deed, the park should query the utility company asking for some documentary evidence why it is there. Most of the time, the company is able to produce documentation showing purchase of the row through the previously owned private property. In those cases, even though the line is not mentioned in the new NPS deed, it pre-existed the parks purchase and as such is a prescriptive easement and will be so recorded in the park administrative record.

There will also be occasions when a company, for whatever reason, constructs a **new** line on park lands without notification or documentation. Mistakes like this are made with surprising frequency, especially by new utility companies, or those not used to dealing with Federal government lands. The park should halt any construction still underway and contact the company immediately, informing them of the intrusion (trespass) and exploring the various actions to be taken.

## Review and Approval

The WASO solicitors have stated that specific right-of-way permits that follow the standard approved format and do not contain sensitive or potentially controversial material, do not require solicitor review. Regional special park use managers should check with their solicitors to confirm this policy. The right-of-way permits shown as Exhibits 4 and 5 are the approved formats.

All *new* right-of-way permits must be submitted to your Regional Office for review, approval, and ultimate execution by the Regional Director. If the permit is a conversion or renewal of an existing permit, it will be reviewed and signed by the Superintendent.

If the right-of-way permit being submitted for review and approval required NEPA and/or Cultural resource compliance and approval, the park will include copies of the approved compliance documents (NEPA Categorical Exclusion, EA/FONSI, EIS/Record of Decision (ROD), and 106 compliance, as applicable) with the package. In all instances, the originals of the compliance documentation should remain in the park.

**Right-of-Way Amendments**

If, during the term of an existing permit, a significant number of Amendments have been written to the same permit, or if the proliferation of amendments become confusing, the park may write a new permit incorporating all of the changes. The new permit would be treated as a conversion. The park could either continue the same term as the existing permit or start anew. Since the main purpose of writing the new permit is simply to consolidate the proliferation of amendments, the park might even consider keeping the same permit number if that is desirable for purposes of continuity.

The original ROW permit number is shown on the upper left side of the face sheet with the "Amendment Number" immediately below it. The date of "Issue" and "Expiration" of the **original** permit is shown on the upper right portion of the face sheet. The approved amendment becomes a part of the original permit and will expire (and be renewed) at the same time as the original permit.

The first paragraph identifies the permit involved, the permittee, the original use permitted, and the purpose of the amendment. The second paragraph gives details of the change. The third paragraph is a statement showing the specific use the amendment authorizes. The amendment should include a statement that all terms and conditions (other than those changed by the amendment, if applicable) remain in effect. If needed, a legal description and/or extra conditions may be added.

The amendment follows the same review and approval procedure as a normal right-of-way conversion. Parks will attach a copy of the original approved and signed right-of-way permit to the amendment when submitting same for review and approval. Copies of any **new** compliance documents or drawings dealing with the amendment, will be attached as well.

All documents associated with the amendment will be added to the Administrative Record of the original ROW permit. A ROW amendment is executed by the Superintendent.

One of the more common types of amendments for utilities deals with the replacement or addition of another line within the same right-of-way already authorized. The most common question associated with this type of use is whether or not to charge an additional fee for the amended use. The following statements are adopted as correct procedures.

> If a utility company is replacing an existing line/pipe within an already authorized right-of-way on a one for one basis, even if the old line is to be abandoned in place and the new line laid over it, no **additional** charge should be levied for the new line. This is considered normal maintenance and authorized. However, and especially in historic parks, the digging involved might require 106 cultural and NEPA compliance, especially if the construction zone will extend beyond previously disturbed ground. The company would be responsible for any costs incurred by the park for these activities.
>
> If a utility company is adding a new line(s) within an already permitted right-of-way, the park should charge the established fee for the fair market value for the new line. This fee would be in addition and added to the fair market value fee already being charged for the existing line(s). There would be no additional charge for monitoring. 106 cultural and NEPA compliance may be required and may incur additional administrative costs.

If, as in the first example, the new line is considered maintenance (a one for one replacement in the same trench), a note should be made in the administrative record detailing the work and noting any changes made. If the new line is in addition to the existing line(s), the park should prepare an amendment to the right-of-way permit.

Amendments may also be used for those instances of change of ownership or mergers of companies. All that is being amended in those instances is usually the name and address of the new permittee, and a statement that they are taking over full control of and responsibility for the row (from XXX the previous holders of the row) and agree to abide by and follow the established conditions. Their signature on the amendment binds them to those statements. Additional language may be inserted as needed, but those would be the core concerns.

## Right-of-Way Renewals

As in any other type of document up for renewal, the park will review the administrative record. This review will include, but not be limited to, the continuing appropriateness of the use, its continuance as not impairing or being in derogation of the resources or park values, as well as a comparison of the documented fees and the latest appraisal for similar use. If the results of this review show no changes or differences from the original document, and the only concern is that it is about to expire, the park may renew it by use of a ROW Amendment. If there have been other

amendments along the way that, after review, have already been attached to the document, the Amendment(s) will remain valid. The Amendment of renewal in particular and any references to the document in general, will specify the existing Amendment(s) as still being in effect.

If a document is up for renewal and the only difference is that the fair market value or other charges have increased or decreased, the change may be recorded on the Amendment of renewal. This is not considered a significant change.

If there have been or will be significant changes to the original permit, over and above those included in the amendment(s), the park will proceed as if this was a conversion of an existing document and write a new ROW permit, with a new number, based on the old document and the amendment(s). If desired, the park may petition the Regional Office to retain the original permit number for administrative reasons. Examples of a significant change would be the relocation of the original line well outside the established ROW, or a major change in the quantity of the line(s). Note that a change in the line character or location could require new environmental and cultural approvals.

If no significant changes are evident, the park may proceed with the renewal process. This process should start at least six months prior to the expiration of the original ROW.

- The permit number will be the same as on the original row permit with the addition of the consecutive amendment number. Example: RW 4290-92-005A1 (where A1 refers to Amendment # 1)

- The term of the new permit will not exceed ten years, or whatever term is current at the time of renewal.

- The first paragraph will state that the intention of the amendment is for the purpose of renewing the ROW permit. Example:

  > Right-of-Way Permit RW XXXX-XX-XXX, issued (date) to the (Company), and describing existing (type of use), is hereby amended to renew the term of the Permit for an additional 10 years from the date of expiration shown above.

- A simple renewal, without major changes, is treated as a conversion and as such is categorically excluded from NEPA compliance. This should be stated in the second paragraph.

  > This renewal is categorically excluded from NEPA compliance under 516 DM 6, Appendix 7, Section 7.4, Paragraph A (5).

- Any additional changes or stipulation would follow, such as any increase or decrease of the fees and/or charges.

A draft of the amendment, along with a copy of the original ROW permit, and all pertinent documentation, will be submitted to the Regional Office for a review.

Upon Regional Office review and approval, the amendment is typed in final and submitted to the company for approval and signature, then to the Superintendent for final execution and implementation.

## Rights-of-Way for Telecommunications Facilities

A right-of-way permit will be used for permitting the siting of telecommunication services facilities on NPS property. The guidance and approved procedures for this process are attached here as Exhibit 6.

## REFERENCES

16 U.S.C. 1a-1
16 U.S.C. 1b(2)
16 U.S.C. 1b(4)
16 U.S.C. 1b(7)
16 U.S.C. 3
16 U.S.C. 3a
16 U.S.C. 4
16 U.S.C. 5
16 U.S.C. 8
16 U.S.C. 79
16 U.S.C. 3161 (ANILCA)
23 U.S.C. 317
28 U.S.C. 2671
31 U.S.C. 9701
40 U.S.C. 481
43 U.S.C. 1734 (FLPMA)
36 CFR Part 14
36 CFR Part 61
40 CFR Part 1500
43 CFR Part 36
43 CFR Subpart 2808
NPS Management Policies 1988
OMB Circular A-25
NPS SPECIAL DIRECTIVE 91-5 (7/3/91)

## DRAWING SPECIFICATION GUIDE

An integral part of the permitting process, the drawing may be used for many purposes. It should identify the general and specific area of the requested use, describe the lands and features involved in the environmental and cultural compliance documents, then be used to construct the legal description and calculate the Land and Facility fees, and finally to guide management in the decision and monitoring process.

To do all this, the drawing must conform to seven basic rules. Each park may adapt these for local specifics or impose more as conditions warrant, but these should always be followed.

- It must identify a true point of beginning by accurate bearings and distances from a known fixed point, locating the exact point of entry onto the park land.

- It must trace the line as it travels through park lands with a separate bearing and distance for each jog and curve.

- It must identify the ending point as the line either ends or leaves the park lands.

- It must have a scale large enough to show detail, a north arrow, and a legend for any notes placed on the drawing.

- It should show any major feature the line passes by or through such as roads and buildings. It should also show the adjacent boundary line when practical.

- The applicant should submit one original (always stays in the park) and at least two paper copies of the final drawing.

- Those drawings that cover a large distance and have more than a few bearings should use a scale no smaller than 1:200. If the line curves, the notation on the drawing should reflect the arc of curve by giving the chord bearing/radius and length.

All parks should encourage those applicants requesting rights-of-way to submit a draft drawing first. A paper copy of the final drawing will accompany both the environmental and cultural request for approval to the regional office. Another copy of the drawing will accompany the right-of-way permit submitted to the regional office for approval and signature.

The applicant should also submit a general topographic map of the area with the right-of-way location plainly marked on the map.

## FEES AND REIMBURSEMENT OF COSTS

**Definitions.** For the purposes of this section, a fee refers to the use and occupancy of NPS lands or facilities and is defined as payment based on the tangible and intangible worth of those NPS lands or facilities, and could be considered a rental amount. In addition, a fee does not reflect a recovery of costs to the NPS. A cost is defined as payment to the NPS for services rendered when such services represent an actual cost to the park and which the park may recover as a reimbursement. **Costs and fees specified in this Exhibit are unique to right-of-way permits in general and this Appendix in particular and should not be applied to other permitting instruments as described in other chapters and appendices of this volume.**

The use of the words "fee" and "cost" in the remainder of this Exhibit are predicated on these definitions.

**Exemptions.** Exemptions from fees and charges are detailed in 36 CFR Part 14. Exemptions are based upon the type and purpose of the use as well as certain categories of user.

**Recovery of Costs.** There are three payments commonly associated with Special Park Uses in general and rights-of-way in particular. They can best be understood if they are broken down into the activities and time frames they cover. Each of the sub-categories below have individual directions on how to handle the moneys received based on legislation, regulation and policy. They are based on the statutory direction that each special use be 'self sustaining' therefore not having to use ONPS funding.

**The application charge** is regulated by the schedule shown at 36 CFR Part 14. The Application charge will accompany or shortly follow submission of an application for a right-of-way permit. This charge covers the costs involved in any preliminary work, then processing the request for an application, then secretarial and printing and mailing costs, then finally the initial analyzing the submitted application to determine completeness. Under normal circumstances it is a budgeted, one time, up front charge that is non-refundable and remitted with the completed application. The application charge should be no less than $100.00. Moneys collected as application charges should be deposited to the park PWE account 318.

**The administrative charge** is covered by 36 CFR Part 14 but has no specified schedule of charges. It should instead, reflect the actual costs incurred by the NPS in processing the right-of-way permit, from reception of a complete application to final permit approval and issuance. This might include but not be limited to research, subject specific meetings, travel, or other excessive personnel time. It also includes all costs associated with an appraisal to determine the land and/or facility fee as well as NEPA and/or Cultural compliance as required.

The park should document the real time costs associated with each permit. This documentation is kept on file in the park and should be used as the basis for calculation of a standard administrative charge if such is possible.

If there are no costs associated with compliance requirements, and the park has not established a standard amount for this function, the park should assess a **minimum** Administrative charge of $100.00 to cover the time spent in the approval process.

The administrative charge is, in most instances, a one time assessment payable either as an up-front billing prior to issuance of the permit, or it may be paid with the first years billing at the discretion of the park. There are instances, however when the decision period could be both active and protracted, especially when investigating a request for a row. In those instances, the charge should be paid, again in advance, in bi-weekly increments. It should be deposited to the reimbursable park PWE account 318 set up for special park uses. Note that if there are additional administrative costs, such as for compliance or involving travel and other considerations, the park should estimate what those costs will be and require the permittee to submit preliminary initial payments or make periodic payments as the case demands to cover those expenses. This can be done at any time, even if the permit is not approved. The applicant is responsible for all costs associated with the permit. Because of this, and especially if the request is dubious and to be able to make a valued judgement the park anticipates extensive charges to be incurred, the permittee should be asked to post a bond that will insure cost reimbursement, even if the permit is denied.

**The Monitoring Charge** is regulated by the schedule shown at 36 CFR Part 14. The Monitoring charge will be assessed on a yearly basis and collected with the lump sum full term (number of years of permit X scheduled amount) or annual billing, whichever method is used, for the use. This charge covers the actual costs incurred by the park accomplishing the required monitoring or management during the construction phase and annual reassessment of the use for continued absence of impairment and derogation, and compatibility with the public interest after the construction period. Moneys collected for this activity reflect actual costs to the park and should be deposited to the reimbursable park PWE account 318.

**The Land and/or Facility Use and Occupancy Fee** 36 CFR Part 14 calls for recovery of the fair market value of lands and waters as determined by the authorized official using an appraisal. The "Authorized Official" is the superintendent as defined in 36 CFR 14.

An appraisal, as we know the word, is usually used to determine the value of land sold, acquired or exchanged. Since we are trying to determine what amounts to the rental of a small portion of the property for use in what is by definition a temporary permit, this is at best difficult, and almost always not the best way to determine the fair market value for right-of-way permits. While there are many ways to determine this amount, one legally acceptable method is detailed below for use by the parks.

First Step The park will originate and maintain an administrative record containing all documentation concerning the establishment and approval of the use and occupancy fee for the park as a whole. This fee should **always be based on comparability** when possible.

The park will prepare a letter for the superintendent's signature for mailing to the local county/city tax assessor. The letter will request an estimate of land values within the immediate area. The object is to determine what the current land values are, based on 100% valuation, and how much those amounts are devalued if the land is encumbered by a utility line. If possible, a range of both of these figures should be obtained and then averaged. The park will then subtract the devaluation amount from the full value. The result is usually in dollars per acre. Divide this figure by 43,500 (the number of square feet in an acre). The result is the amount for one square foot which is what you are looking for.

*A word of caution.* Depending on who supplies you with these figures, you must be sure they understand exactly what you are looking for - the rental value. In some instances, "fair market value" includes not only recovery of costs but a profit factor built in. While this may be an efficient method for them to use, it will not work for us. Be sure of both the accuracy and your full understanding of what you are receiving.

While this method has proven effective in most urban areas, it is less so in rural areas. Those parks in a rural area should try the same procedure first. If no usable answers are received, write to the local agricultural agent and ask for the average rental price per acre for undeveloped land in the same area. Once this figure is received, use the same method, converting acres to feet, then divide. This will give you the same cost per square foot.

A third, possibly more direct but less available source for this information would be nearby Federal, state, county and/or local governments, as applicable. This letter would state that the park is conducting a survey to determine a fair market value rate for utility lines crossing park lands. It will then ask what amount that agency charges for a similar use, preferably by the linear foot. Should there by no governmental entity within a reasonable distance from the park, the park will query local corporations or, lacking even that, individual land owners.

For those parks unable to arrive at a figure using the above methods, another source of information is available. The BLM has established set rental fees for its lands by state and counties. These rates are administratively set and are adjusted annually based upon the change in the gross national product implicit price deflator index. This information is available in all western states or from the BLM Washington or Denver office. Parks are warned however, that these rates are usually low compared to the rates resulting from the other methods listed above.

Second Step In many parks, right-of-way widths will vary only slightly from a range of 10 - 20 feet. The industry standard right-of-way for single underground power, telephone, and cable TV lines ranges from two and one half to five feet on either side of the line. However, major transmis-

sion lines may be considerably wider. Some past practices have been to ignore the width and charge by the linear foot. This means that a company with a twenty foot wide by 100 foot long right-of-way would paid the same fee as one with a 200 foot wide by 100 foot long right-of-way. This is not equitable.

To simplify matters and to rectify this inequity, we recommend that each park establish a standard right-of-way width normal to their area, for instance 10 feet. The amount for each linear foot, as determined above, would then be multiplied by 10 (or whatever width the park decided upon). This would become the standard fee per linear foot of right-of-way for all widths up to 10 feet. The company requesting a wider right-of-way, more than 10 feet, would be charged the appropriate multiple of the established fee as determined by the superintendent.

Third Step The park will determine the high, low, and median amounts for the normal width right-of-way as calculated using the information from step one, and present it, with the full range of responses from all agencies queried, to the superintendent for his or her selection of an appropriate fee.

Since the value of lands could change from one park area to another, the same method will be used for widely dispersed areas of the park, or different types of areas such as urban and agricultural, should such differences exist.

Once the superintendent has selected this Land and/or Facility Use and Occupancy fee(s) and signed the document, it, with all supporting documentation, will be filed in the administrative record of the park. The fee is in effect once the superintendent has signed the administrative record document.

The fee, once established, will usually remain valid for three to five years, depending upon outside factors, and will be used for all right-of-way permits issued during that time. When it becomes necessary to update the fee, the process described above is repeated. The new rate is applied to new rights-of-way or when an expiring permit is being renewed. The Park will use a Right-of-Way Amendment to reflect the new amount.

Moneys collected for land and/or facility use and occupancy will be deposited to the Miscellaneous Receipts of the General Fund under PWE 891.

**Receipt of Funds and The Bill For Collection** Of the four charges involved with rights-of-way, the application charge is collected up front, usually with the receipt of the formal application. The one time administrative charge is collected either up front, in increments during the decision process, or with submission of the first years payment, at the discretion of the park. The monitoring charge and land and/or facility use and occupancy fee are collected, as calculated above, for each year of the life of the permit. There are two methods of collecting these moneys. The normal method is to calculate an annual total and bill the permittee each year for the life of the permit. Or the park may elect to charge a lump sum amount for the entire ten year permit to be paid up front. If this is the

decision, the combined annual cost (monitoring and use and occupancy) is multiplied by the term of the permit (at present a maximum of 10 years) and added to the one time administrative cost. The permittee is then presented with a bill for collection for this amount. Both methods have advantages and disadvantages, but the decision as to which will be used is up to the superintendent.

The park should prepare and forward a Bill for Collection for billing for the first year. Note that costs associated with compliance requirements (if any), as well as other Administrative and Monitoring charges, will normally be shown under PWE 318. The costs associated with the Application would normally be shown under PWE 318, and the land and/or facility use and occupancy will be placed under PWE 891. The park should establish a system of billing for each subsequent yearly remittance of the monitoring charge and fee for Use and Occupancy of the land and/or facility. Refer to Chapter 10 for more information on this subject.

## SEQUENCE OF EVENTS

The sequence of events for permitting rights-of-way listed below assumes approval for and completion of each line item. Should the line item not be approved, the sequence reverts to the previous step for correction and resubmittal until such approval is obtained. In each instance, the minimum number of copies of the document is given. Note that the sequence for Wireless Telecommunication Facility rights-of-way differs from that shown below. See Exhibit 6.

- Receipt of letter from requester. Start of Administrative Record.

- If this is an application for a new permit and not a conversion from a Special Use or other type of permit, send the requester an application form, pointing out the need for Environmental (and Cultural if applicable) compliance documentation (See Chapter 6), a metes and bounds drawing, and submission of the standard application fee. Depending upon the nature of the use and/or area, the required documentation may be extensive, but would normally be no less than an Environmental Assessment and (if applicable) sufficient cultural assessment information to submit 106 cultural compliance documentation. The minimum objective here is to obtain enough information and documentation to receive NEPA and 106 cultural assessment approval and sign-off at the Regional level. If the use qualifies as a categorical exclusion, either or both may not be required.

- For conversions from other permits, a new drawing may or may not be needed. Normally conversions are considered categorical exclusions and NEPA and 106 compliance is not needed. Also under normal circumstances, and assuming that the park already has the required information, an application fee is not charged.

- The park determines an estimate of all costs needed for the administrative determination process and sends this estimate to the applicant requiring up-front payment in whole or in biweekly payments.

- For new requests, the Park receives and reviews all needed compliance and other documentation from the requester, then submits copies to the Regional Office along with requests for NEPA and 106 cultural approval as appropriate. Note that this is usually the most time consuming step in the process due to the compliance requirements.

- The Region reviews environmental/cultural assessments and returns approvals, including instructions on any mitigation that needs to be accomplished during the construction phase or during the life of the permit. The suggested mitigation measures are intended for inclusion in the permit as conditions. Note that if the park is using the standard ROW template, the Region may indicate approval here and the park could skip the additional approval for the ROW draft shown below.

- Park prepares draft of ROW permit, including any requirements imposed at either the park or Regional level.

- Park sends the draft, a copy of the approved compliance documents, and a copy of the drawing as applicable, to the Regional Office for policy compliance and legal sufficiency (if changes were made to the standard ROW format). Note that the originals of the signed and approved compliance documents are kept in the park administrative record file.

- The Region reviews draft of permit, then submits to Regional solicitor (if needed for review and approval). Region notifies park of approval and/or corrections to be made as appropriate. At this point, and as a courtesy, the park should send the applicant a copy of this corrected and approved draft for any comments they might have, then proceed.

- For new permits, the park prepares three original copies of ROW in final typing, and sends all three to Permittee for signature. The Permittee examines, signs and returns all three copies to the park. The park forwards the three signed permits (with one copy of each of the approved compliance documents and at least one copy of the drawing) to the Regional Office for signature by the Regional Director. Those permits being amended, renewed or converted from other formats may skip this step and are signed by the Superintendent.

- The Region returns two signed and dated copies to park, retaining one copy for its records.

- Park retains one copy for its records and sends fully executed copy to the Permittee, and the row permit is in effect.

If, at any stage, any of the documents involved needs revision, the required work is done and the step is repeated unless specific arrangements are made otherwise.

Note that the same sequence is followed for amendments to Right-of-Way Permits.

**STATE OF (enter state)**

Right-of-Way Permit No.:**RW XXXX-XX-XXX**
Replaces SUP No.: **XXXX-XX-XXXX**

United States Department of the Interior
National Park Service
Right-of-Way Permit for
**((INSERT NAME OF PERMITTEE))**

WHEREAS, **(FULL NAME OF PERMITTEE)**, (hereinafter Permittee) has applied to the United States of America, (hereinafter Permittor) for a right-of-way to **(construct?)** operate and maintain an **(existing?) (overhead/underground?) (TYPE OF USE)** within the boundaries of **(NAME OF PARK)** (hereinafter Park), a unit of the National Park System, United States Department of the Interior; and

WHEREAS, the National Park Service (hereinafter Service) administers the Park that was established as a unit of the National Park System, United States Department of the Interior pursuant to 16 U.S.C. § **(CITE AUTHORIZING LEGISLATION FOR PARK)**; and

WHEREAS, the Director of the National Park Service (or his delegate) is required pursuant to 16 U.S.C. 1a-1 to authorize only those uses of land within the Park which will not be in derogation of the values and purposes for which the Park was established, except as may have been or shall be directly and specifically provided by Congress; and

**((Note: ONLY CITE THE AUTHORITY BELOW WHICH APPLIES ))**

WHEREAS, 16 U.S.C. 5 authorizes the Director of the National Park Service (or his delegate) having jurisdiction over subject land, to issue a permit for rights-of-way over, across and upon the lands and reservations of the United States for **((QUOTE ONLY THAT SECTION THAT APPLIES TO THE USE))** upon a finding by the Director (or his delegate) that the right-of-way is not incompatible with the public interest; and

WHEREAS, 16 U.S.C. 79 authorizes the use of rights-of-way through the Park for **((QUOTE ONLY THAT SECTION WHICH APPLIES TO THE USE))**, provided that the Director (or his delegate) finds that the same is not incompatible with the public interest; and

WHEREAS, the Service has promulgated regulations at Title 36 Code of Federal Regulations, Part 14, regarding rights-of-way over, across and upon the lands administered by the National Park Service; and

WHEREAS, the Service has been delegated the authority to allow such rights-of-way over, across and upon land under the jurisdiction of the Service pursuant to 245 Departmental Manual 5.1; and

WHEREAS, the Service has determined that the proposed use of the park lands for the **construction,** maintenance and operation of the subject **(USE)** is neither incompatible with the public interest nor inconsistent with the use of such lands for park purposes; and

THEREFORE, the United States, through the Service, an agency of the Department of the Interior, acting pursuant to the authority of 16 U.S.C. 5 or 16 U.S.C. 79 issues this permit to **NAME AND ADDRESS OF PERMITTEE**, for a right-of-way across Federal lands within **(NAME OF PARK)** for the **(construction,)** operation and maintenance of a **(USE)**.

The Permittee agrees to comply with and be bound by the Service regulations, 36 CFR Part 14, regarding rights-of-way over, across and upon lands administered by the Service, in addition to the terms and conditions set forth in this permit.

MAP AND LEGAL DESCRIPTION OF RIGHT-OF-WAY

The right-of-way shall be _____ feet wide with ____ feet on either side of the described centerline for underground lines, and ___ feet wide with ____ feet on either side of the described centerline for overhead lines. Underground or overhead right-of-way descriptions contained herein which are parallel to a roadway shall not exceed ___ feet with ___ feet on either side of the described centerline. For those parts of the permit which describe **(COMPANY NAME)** appurtenances such as **(SWITCHES, TRANSFORMERS ETC)**, the right-of-way shall be ____ feet centered on the equipment or as otherwise described.

**(INSERT LEGAL DESCRIPTION)**

**(and as described on the drawing located _____.)**

AUTHORITY TO ENTER INTO AGREEMENT FOR RIGHT-OF-WAY

The Permittee represents and warrants to the Permittor that:

(1) It is duly authorized and empowered under applicable laws of the **STATE/COMMONWEALTH** and by its charter and bylaws to enter into and perform this agreement in accordance with the provisions;

(2) Its Board of Supervisors, or duly authorized executive committee, has duly approved, and has duly authorized the execution, delivery, and performance by it of this agreement by the **PRESIDENT OF THE COMPANY**.

(3) All action that may be necessary or incidental to the approval of this permit, and the due

execution, delivery, and performance by the Permittee has been taken; and

(4) All of the foregoing approvals, authorizations, and actions are in full force and effect at the time of the execution and delivery of this permit.

PERMITTED USE OF RIGHT-OF-WAY BY THE PERMITTEE

The right-of-way is for the sole purpose of **constructing**, operating and maintaining a **(USE)** across the above described lands, application for which was made in writing to the superintendent, **(NAME OF PARK)** (hereinafter superintendent) on **((DATE))** , by the Permittee. That in utilizing the right-of-way the Permittee agrees to comply with and be bound by laws and regulations regarding the use and occupancy of the lands administered by the Service and by the terms of this permit.

DEVIATION FROM APPROVED RIGHT-OF-WAY

The Permittee agrees that it will not deviate from the location of the approved right-of-way in its **((construction,))** operation and maintenance of the subject **(USE)**. All ingress and egress for **construction**, maintenance and operation of the **(USE)** shall be restricted to the right-of-way. In the event that the Permittee determines that ingress and egress over park lands not included in the right-of-way are necessary for the **((construction,))** maintenance and operation of the subject **(USE)**, then the Permittee must apply, in writing, to the superintendent for approval of such ingress and egress.

EFFECTIVE DATE OF THE RIGHT-OF-WAY

The effective date of this permit shall be the date of its execution by the Regional Director (or delegate) and the Permittee. The right-of-way permit shall terminate TEN (10) years from the effective date, at noon, (State time) unless prior thereto it is relinquished, abandoned, or otherwise terminated pursuant to the provisions of this permit or of any applicable Federal law or regulation.

RENEWAL OF RIGHT-OF-WAY

Unless relinquished, abandoned, or otherwise terminated pursuant to the provisions of the permit or of any applicable Federal law or regulations, the Permittee may make application to the superintendent, at least six months prior to its expiration date, for renewal of the right-of-way.

The Permittee shall file a written application, SF 299, in accordance with the existing Service regulations, to renew the right-of-way. The Permittee shall agree to comply with all the laws and regulations existing at such application date governing the occupancy and use of the lands

of the Park for the purposes desired. The right-of-way permit may be renewed after full consideration of the application.

## DISPOSAL OF PROPERTY ON TERMINATION OF RIGHT-OF-WAY

Upon the termination of the right-of-way permit by expiration or by cancellation for cause, in the absence of any agreement to the contrary, if all monies due the Permittor have been paid, the Permittee shall be allowed six months, or such additional time as may be provided, in which to remove from the right-of-way all property or improvements of any kind placed by them; and if not removed within the time allowed, all such property and improvements shall become the property of the United States.

## NONUSE OR ABANDONMENT

It is understood and agreed by the parties that all or any part of the right-of-way may be terminated at the discretion of the Permittor in the event of nonuse or abandonment for a period of two years by the Permittee. In the case of termination, the Permittor will provide the Permittee with written notice including reasons for the termination.

## FEES FOR USE AND OCCUPANCY

The Permittor and Permittee understand and agree that the consideration for utilization of the lands, pursuant to the right-of-way permit, constitutes the fair market value of the use of the lands, prorated on an annual basis, for the term of the right-of-way. The Permittee further agrees that in the event of the right-of-way being renewed, pursuant to the provisions for renewal, then the consideration for renewal will reflect the fair market value of the use of the lands at the time of the renewal.

## FEES AND REIMBURSEMENT OF COSTS

1. Pursuant to 36 CFR. 14.22(a), the Permittee agrees to reimburse the Permittor for administrative and other costs incurred by the Permittor in processing the application for the right-of-way permit. Permittee agrees to submit a one time application fee of **((a minimum of fifty dollars ($50) for linear facilities, or two hundred fifty ($250) for non-linear facilities))**.

2. Pursuant to 36 CFR. 14.22(b), the Permittee also agrees to reimburse the Permittor for costs incurred by the Permittor in monitoring the authorized use of the right-of-way, the fee of **((a minimum of twenty dollars ($20) per mile for linear facilities, or one hundred ($100) for non-linear facilities))** per year.

3. Pursuant to 36 CFR. 14.26(a), the Permittee agrees to pay the Permittor for the use and occupancy of park lands, the fair market value as determined by appraisal by the authorized officer. The fee for use and occupancy of park land covered in this permit shall be a minimum of twenty five dollars ($25.00) per five-year period, or **(($ per lineal foot per year, with a minimum width of one foot for linear facilities, or fair market value per foot, acre, or site for non-linear facilities))**.

4. Total payment for the first year of this permit will be $ **.** . Payment for each year thereafter will be $ **.** per year.

TERMS AND CONDITIONS

The permit is subject to the following terms and conditions:

(1) This permit shall not be construed as a permanent interest in the land of the right-of-way or as an abandonment of use and occupancy by the United States, but shall be considered a use of the land as described, anything contained to the contrary notwithstanding.

(2) This right-of-way permit may be terminated upon breach of any of the stated conditions or at the discretion of the Regional Director of the Service. Permittee will be given written notice and thirty (30) days to allow an opportunity for corrective actions before termination may occur. The written notice shall describe the specific violations of the permit. If Permittee does not correct the violations to the satisfaction of the Service, or present a reasonable plan acceptable to the Service within the thirty (30) day period, then the NPS shall be entitled to revoke this permit.

(3) The Permittee shall comply with all applicable State and Federal laws and existing regulations promulgated thereunder in the **((construction,))** operation and maintenance of the **(USE)**.

(4) The superintendent, **(NAME OF PARK)**, shall be notified in writing no less than **((TWO WEEKS))** prior to the start of initial construction on park lands. An on-site meeting will be conducted no less than one week prior to start of construction between representatives of the park and the Permittee construction/maintenance supervisor to determine and clarify the scope of the project and any requirements of the Service. The Permittee construction/maintenance supervisor will contact the park on the morning of the first day of work and each morning thereafter prior to entering the park, advising the location and extent of work crews and equipment in the park. Except in extraordinary situations and with the agreement of the superintendent, or as determined at or prior to the on-site meeting above, all work on park lands will be conducted on a Monday through Friday, 8:00 am through 5:00 pm basis. All work on park lands shall be completed to the satisfaction of the superintendent or his or her representative.

(5) The Permittee shall have a right of ingress and egress within the right-of-way at all times for the purposes of maintaining and operating the existing **(USE)** and appurtenances.

(6) If any portion of the **(USE)** are to be installed underground within the road shoulders of public roads, they shall comply with the specifications of the highway department having jurisdiction. Detailed procedures of installation are also subject to approval in advance of construction by the superintendent or his representative.

(7) If required, the Permittee shall file a performance bond with satisfactory surety payable to the Permittor to fully insure compliance with the permit terms and conditions.

(8) The Permittee shall be responsible to pay the Permittor for any damage resulting from this permit which would not reasonably be inherent in the use which the Permittee is authorized to make of the land. The Permittor will give the Permittee written notice of such damage and the Permittee will either take corrective action or pay the indicated amount as agreed upon and approved by the superintendent.

(9) Use by the Permittee of the land is subject to the right of the park to establish trails, roads, and other improvements and betterments over, upon or through said premises, and further to the use by travelers and others of such roads, trails, and other improvements already existing. If it is necessary to exercise such right, every effort will be made by the park to refrain from unduly interfering with or preventing use of the land by the Permittee for the purposes intended under this permit.

(10) The Permittee shall take adequate measures as directed and approved by the superintendent to prevent or minimize damage to park resources. This may include restoration, soil conservation and protection measures, landscaping, and repairing roads, trails, fences, etc. The Permittee shall dispose of brush and other refuse as required by the superintendent. The superintendent or his representative may inspect the right-of-way area as deemed necessary.

(11) The Permittee will halt any activities and notify the superintendent upon discovery of threatened or endangered species or archeological, paleontological, or historical findings. All artifacts unearthed remain the property of the park.

(12) No vegetation may be cut or destroyed without first obtaining approval from the superintendent. Any vegetation that must be removed shall be mitigated as specified by the superintendent.

(13) Use of pesticides and/or herbicides on park lands is prohibited without prior written approval from the superintendent.

(14) In the event any facilities covered by this permit should interfere with future Park construction, the Permittee agrees to terminate the use or relocate them at no cost to the Service within 60 days after written notice.

(15) The Permittee agrees to do everything reasonably within its power, both independently and on request of the superintendent, to prevent and suppress fires resulting from the Permittee's activities on and adjacent to the right-of-way.

(16) The Permittee agrees that the right-of-way shall be subject to the express condition that the use will not unduly interfere with the management and administration by the Service of the lands. Further, the Permittee agrees and consents to the occupancy and use by the park, its Permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization, for necessary operations incident to such management, administration, or disposal.

(17) Upon expiration, revocation or termination of this permit, the Permittee shall leave the lands subject to the permit in as nearly the original condition as possible, as directed and approved by the superintendent.

(18) The Permittee agrees that in undertaking all activities pursuant to this permit, it will not discriminate against any person because of race, color, religion, sex, or national origin.

(19) No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this permit or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this permit if made with a corporation for its general benefit.

(20) No transfer of the permit will be recognized unless and until it is first approved in writing by the Regional Director of the Service. Such a transfer must be filed in accordance with existing regulations at the time of transfer, and must be supported by the stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way.

(21) This agreement is made upon the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, or death to any person or property of any kind whatsoever, whether to the person or property of the Permittee, its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by the Permittee in connection herewith, and the Permittee hereby covenants and agrees to indemnify, defend, save and hold harmless the United States, its agents and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.

(22) Any alterations to this permit must be in writing and signed by the parties. Renewals will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.

(23) Any underground utilities previously located within this right-of-way which are damaged or disrupted during maintenance shall be repaired or restored by the Permittee within four hours.

(24) The Permittee shall be responsible for the provision and maintenance of proper signs, barricades or other means of warning motorists and pedestrians of danger during all periods of repair and maintenance.

(25) Nothing herein contained shall be construed as binding the Service to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this permit for the fiscal year, or to involve the Service in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

## COMPLIANCE

Failure of the Permittee to comply with any provision of this right-of-way permit shall constitute grounds for immediate termination of this permit.

## WAIVER NOT CONTINUING

The waiver of any breach of any provision of this right-of-way permit, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent, to any subsequent or prior breach of the same or any other provision of this permit.

IN WITNESS WHEREOF, the Regional Director of the National Park Service, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary of the Department of the Interior, has caused this Permit of Right-of-Way number **RW - -** to be executed this _____ day of _____, 20_____.

Regional Director
**(Fill in Region)**
National Park Service
United States Department of the Interior

ACCEPTED THIS _____ DAY OF _____, 20____.

(Title)
(Permittee Company)

Attest

**STATE OF (enter state)** Right-of-Way Permit No.:**RW XXXX-XX-XXX**
Replaces SUP No.: **XXXX-XX-XXXX**

United States Department of the Interior
National Park Service
Right-of-Way Permit for
**((INSERT NAME OF PERMITTEE))**

WHEREAS, **(FULL NAME OF PERMITTEE)**, (hereinafter Permittee) has applied to the United States of America, (hereinafter Permittor) for a right-of-way to **(construct?)** operate and maintain an **(existing?) (overhead/underground?) (TYPE OF USE)** within the boundaries of **(NAME OF PARK)** (hereinafter Park), a unit of the National Park System, United States Department of the Interior; and

WHEREAS, the National Park Service (hereinafter Service) administers the Park that was established as a unit of the National Park System, United States Department of the Interior pursuant to 16 U.S.C. § **(CITE AUTHORIZING LEGISLATION FOR PARK)**; and

WHEREAS, the Director of the National Park Service (or his delegate) is required pursuant to 16 U.S.C. 1a-1 to authorize only those uses of land within the Park which will not be in derogation of the values and purposes for which the Park was established, except as may have been or shall be directly and specifically provided by Congress; and

**((Note: ONLY CITE THE AUTHORITY BELOW WHICH APPLIES ))**

WHEREAS, 16 U.S.C. 5 authorizes the Director of the National Park Service (or his delegate) having jurisdiction over subject land, to issue a permit for rights-of-way over, across and upon the lands and reservations of the United States for **((QUOTE ONLY THAT SECTION THAT APPLIES TO THE USE))** upon a finding by the Director (or his delegate) that the right-of-way is not incompatible with the public interest; and

WHEREAS, 16 U.S.C. 79 authorizes the use of rights-of-way through the Park for **((QUOTE ONLY THAT SECTION WHICH APPLIES TO THE USE))**, provided that the Director (or his delegate) finds that the same is not incompatible with the public interest; and

WHEREAS, the Service has promulgated regulations at Title 36 Code of Federal Regulations, Part 14, regarding rights-of-way over, across and upon the lands administered by the National Park Service; and

WHEREAS, the Service has been delegated the authority to allow such rights-of-way over, across and upon land under the jurisdiction of the Service pursuant to 245 Departmental Manual 5.1; and

WHEREAS, the Service has determined that the proposed use of the park lands for the **construction,** maintenance and operation of the subject **(USE)** is neither incompatible with the public interest nor inconsistent with the use of such lands for park purposes; and

THEREFORE, the United States, through the Service, an agency of the Department of the Interior, acting pursuant to the authority of 16 U.S.C. 5 or 16 U.S.C. 79 issues this permit to **NAME AND ADDRESS OF PERMITTEE**, for a right-of-way across Federal lands within **(NAME OF PARK)** for the **(construction,)** operation and maintenance of a **(USE)**.

The Permittee agrees to comply with and be bound by the Service regulations, 36 CFR Part 14, regarding rights-of-way over, across and upon lands administered by the Service, in addition to the terms and conditions set forth in this permit.

MAP AND LEGAL DESCRIPTION OF RIGHT-OF-WAY

The right-of-way shall be _____ feet wide with ____ feet on either side of the described centerline for underground lines, and ___ feet wide with ____ feet on either side of the described centerline for overhead lines. Underground or overhead right-of-way descriptions contained herein which are parallel to a roadway shall not exceed ___ feet with ___ feet on either side of the described centerline. For those parts of the permit which describe **(COMPANY NAME)** appurtenances such as **(SWITCHES, TRANSFORMERS ETC)**, the right-of-way shall be ____ feet centered on the equipment or as otherwise described.

**(INSERT LEGAL DESCRIPTION)**

**(and as described on the drawing located _____.)**

AUTHORITY TO ENTER INTO AGREEMENT FOR RIGHT-OF-WAY

The Permittee represents and warrants to the Permittor that:

(1) It is duly authorized and empowered under applicable laws of the **STATE OR COMMONWEALTH** and by its charter and bylaws to enter into and perform this agreement in accordance with the provisions;

(2) Its Board of Supervisors, or duly authorized executive committee, has duly approved, and has duly authorized the execution, delivery, and performance by it of this agreement by the **PRESIDENT OF THE COMPANY**.

(3) All action that may be necessary or incidental to the approval of this permit, and the due execution, delivery, and performance by the Permittee has been taken; and

(4) All of the foregoing approvals, authorizations, and actions are in full force and effect at the time of the execution and delivery of this permit.

## PERMITTED USE OF RIGHT-OF-WAY BY THE PERMITTEE

The right-of-way is for the sole purpose of **constructing**, operating and maintaining a **(USE)** across the above described lands, application for which was made in writing to the superintendent, **(NAME OF PARK)** (hereinafter superintendent) on **((DATE))** , by the Permittee. That in utilizing the right-of-way the Permittee agrees to comply with and be bound by laws and regulations regarding the use and occupancy of the lands administered by the Service and by the terms of this permit.

## DEVIATION FROM APPROVED RIGHT-OF-WAY

The Permittee agrees that it will not deviate from the location of the approved right-of-way in its **((construction,))** operation and maintenance of the subject **(USE)**. All ingress and egress for **construction**, maintenance and operation of the **(USE)** shall be restricted to the right-of-way. In the event that the Permittee determines that ingress and egress over park lands not included in the right-of-way are necessary for the **((construction,))** maintenance and operation of the subject **(USE)**, then the Permittee must apply, in writing, to the superintendent for approval of such ingress and egress.

## EFFECTIVE DATE OF THE RIGHT-OF-WAY

The effective date of this permit shall be the date of its execution by the Regional Director (or delegate) and the Permittee. The right-of-way permit shall terminate TEN (10) years from the effective date, at noon, (State time) unless prior thereto it is relinquished, abandoned, or otherwise terminated pursuant to the provisions of this permit or of any applicable Federal law or regulation.

## RENEWAL OF RIGHT-OF-WAY

Unless relinquished, abandoned, or otherwise terminated pursuant to the provisions of the permit or of any applicable Federal law or regulations, the Permittee may make application to the superintendent, at least six months prior to its expiration date, for renewal of the right-of-way.

The Permittee shall file a written application, SF 299, in accordance with the existing Service regulations, to renew the right-of-way. The Permittee shall agree to comply with all the laws and regulations existing at such application date governing the occupancy and use of the lands of the Park for the purposes desired. The right-of-way permit may be renewed after full consideration of the application.

## DISPOSAL OF PROPERTY ON TERMINATION OF RIGHT-OF-WAY

Upon the termination of the right-of-way permit by expiration or by cancellation for cause, in the absence of any agreement to the contrary, if all monies due the Permittor have been paid, the Permittee shall be allowed six months, or such additional time as may be provided, in which to remove from the right-of-way all property or improvements of any kind placed by them; and if not removed within the time allowed, all such property and improvements shall become the property of the United States.

## NONUSE OR ABANDONMENT

It is understood and agreed by the parties that all or any part of the right-of-way may be terminated at the discretion of the Permittor in the event of nonuse or abandonment for a period of two years by the Permittee. In the case of termination, the Permittor will provide the Permittee with written notice including reasons for the termination.

## FEES FOR USE AND OCCUPANCY

The Permittor and Permittee understand and agree that the consideration for utilization of the lands, pursuant to the right-of-way, for **(irrigation projects [OR] municipally operated projects [OR] non-profit or Rural Electrification Administration projects [OR] where the use is by a Federal governmental agency [[CHOOSE ONE]])** is waived according to 36 CFR 14.26(c)(1).

## FEES AND REIMBURSEMENT OF COSTS

Pursuant to 36 CFR. 14.22(a)(2), **[ (i) for state or local governments or agencies or instrumentalities thereof where the lands will be used for governmental purposes and continue to serve the general public [OR] (iii) for Federal government agencies] [[CHOOSE ONE]]**, payment of fees and costs incurred by the Service as a result of this permit are waived.

TERMS AND CONDITIONS

The permit is subject to the following terms and conditions:

(1) This permit shall not be construed as a permanent interest in the land of the right-of-way or as an abandonment of use and occupancy by the United States, but shall be considered a use of the land as described, anything contained to the contrary notwithstanding.

(2) This right-of-way permit may be terminated upon breach of any of the stated conditions or at the discretion of the Regional Director of the Service. Permittee will be given written notice and thirty (30) days to allow an opportunity for corrective actions before termination may occur. The written notice shall describe the specific violations of the permit. If Permittee does not correct the violations to the satisfaction of the Service, or present a reasonable plan acceptable to the Service within the thirty (30) day period, then the NPS shall be entitled to revoke this permit.

(3) The Permittee shall comply with all applicable State and Federal laws and existing regulations promulgated thereunder in the **((construction,))** operation and maintenance of the **(USE)**.

(4) The superintendent, **(NAME OF PARK)**, shall be notified in writing no less than **((TWO WEEKS))** prior to the start of initial construction on park lands. An on-site meeting will be conducted no less than one week prior to start of construction between representatives of the park and the Permittee construction/maintenance supervisor to determine and clarify the scope of the project and any requirements of the Service. The Permittee construction/maintenance supervisor will contact the park on the morning of the first day of work and each morning thereafter prior to entering the park, advising the location and extent of work crews and equipment in the park. Except in extraordinary situations and with the agreement of the superintendent, or as determined at or prior to the on-site meeting above, all work on park lands will be conducted on a Monday through Friday, 8:00 am through 5:00 pm basis. All work on park lands shall be completed to the satisfaction of the superintendent or his or her representative.

(5) The Permittee shall have a right of ingress and egress within the right-of-way at all times for the purposes of maintaining and operating the existing **(USE)** and appurtenances.

(6) If any portion of the **(USE)** are to be installed underground within the road shoulders of public roads, they shall comply with the specifications of the highway department having jurisdiction. Detailed procedures of installation are also subject to approval in advance of construction by the superintendent or his representative.

(7) If required, the Permittee shall file a performance bond with satisfactory surety payable to the Permittor to fully insure compliance with the permit terms and conditions.

(8) The Permittee shall be responsible to pay the Permittor for any damage resulting from this permit which would not reasonably be inherent in the use which the Permittee is authorized to make of the land. The Permittor will give the Permittee written notice of such damage and the Permittee will either take corrective action or pay the indicated amount as agreed upon and approved by the superintendent.

(9) Use by the Permittee of the land is subject to the right of the park to establish trails, roads, and other improvements and betterments over, upon or through said premises, and further to the use by travelers and others of such roads, trails, and other improvements already existing. If it is necessary to exercise such right, every effort will be made by the park to refrain from unduly interfering with or preventing use of the land by the Permittee for the purposes intended under this permit.

(10) The Permittee shall take adequate measures as directed and approved by the superintendent to prevent or minimize damage to park resources. This may include restoration, soil conservation and protection measures, landscaping, and repairing roads, trails, fences, etc. The Permittee shall dispose of brush and other refuse as required by the superintendent. The superintendent or his representative may inspect the right-of-way area as deemed necessary.

(11) The Permittee will halt any activities and notify the superintendent upon discovery of threatened or endangered species or archeological, paleontological, or historical findings. All artifacts unearthed remain the property of the park.

(12) No vegetation may be cut or destroyed without first obtaining approval from the superintendent. Any vegetation that must be removed shall be mitigated as specified by the superintendent.

(13) Use of pesticides and/or herbicides on park lands is prohibited without prior written approval from the superintendent.

(14) In the event any facilities covered by this permit should interfere with future Park construction, the Permittee agrees to terminate the use or relocate them at no cost to the Service within 60 days after written notice.

(15) The Permittee agrees to do everything reasonably within its power, both independently and on request of the superintendent, to prevent and suppress fires resulting from the Permittee's activities on and adjacent to the right-of-way.

(16) The Permittee agrees that the right-of-way shall be subject to the express condition that the use will not unduly interfere with the management and administration by the Service of the lands. Further, the Permittee agrees and consents to the occupancy and use by the park, its

Permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization, for necessary operations incident to such management, administration, or disposal.

(17) Upon expiration, revocation or termination of this permit, the Permittee shall leave the lands subject to the permit in as nearly the original condition as possible, as directed and approved by the superintendent.

(18) The Permittee agrees that in undertaking all activities pursuant to this permit, it will not discriminate against any person because of race, color, religion, sex, or national origin.

(19) No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this permit or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this permit if made with a corporation for its general benefit.

(20) No transfer of the permit will be recognized unless and until it is first approved in writing by the Regional Director of the Service. Such a transfer must be filed in accordance with existing regulations at the time of transfer, and must be supported by the stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way.

(21) This agreement is made upon the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, or death to any person or property of any kind whatsoever, whether to the person or property of the Permittee, its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by the Permittee in connection herewith, and the Permittee hereby covenants and agrees to indemnify, defend, save and hold harmless the United States, its agents and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.

(22) Any alterations to this permit must be in writing and signed by the parties. Renewals will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.

(23) Any underground utilities previously located within this right-of-way which are damaged or disrupted during maintenance shall be repaired or restored by the Permittee within four hours.

(24) The Permittee shall be responsible for the provision and maintenance of proper signs, barricades or other means of warning motorists and pedestrians of danger during all periods of repair and maintenance.

(25) Nothing herein contained shall be construed as binding the Service to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this permit for the fiscal year, or to involve the Service in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

COMPLIANCE

Failure of the Permittee to comply with any provision of this right-of-way permit shall constitute grounds for immediate termination of this permit.

WAIVER NOT CONTINUING

The waiver of any breach of any provision of this right-of-way permit, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent, to any subsequent or prior breach of the same or any other provision of this permit.

IN WITNESS WHEREOF, the Regional Director of the National Park Service, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary of the Department of the Interior, has caused this Permit of Right-of-Way number **RW - -** to be executed this _____ day of _____, 20__.

Regional Director
**(Fill in Region)**
National Park Service
United States Department of the Interior

ACCEPTED THIS _____ DAY OF _____, 20__.

(Title)
(Permittee Company)

Attest

# WIRELESS TELECOMMUNICATION FACILITIES

## INTRODUCTION

This Exhibit sets forth the procedures applicable to permitting Wireless Telecommunication Facility (WTF) sites in units of the National Park System. These are service-wide procedures unique to WTF sites and are in addition to the requirements and procedures in Appendix 5 (Rights-of-Way) and other applicable sections of RM-53.

The procedures described in this Exhibit apply only to applicants holding FCC licenses for wireless telecommunication services as described in section 704 (c) of the Telecommunications Act of 1996, Public Law 104-104, and superintendents will work with such applicants to satisfy the requirements of that Act, Director's Order 53 (Special Park Uses), and 36 CFR Part 14. Only FCC licensees can apply for WTF permits.

## OVERVIEW

The following is only meant to be a brief summary or overview of the WTF application and permitting process. For full procedures containing detailed explanations, managers should read and follow the **PROCEDURES** shown below this section when dealing with this subject.

PRE-APPLICATION

- Preliminary review of policy, regulations and park specific requirements by the unit staff.

- If appropriate, schedule preliminary meetings with applicants (or potential applicants if known), advising them of requirements and information the park will need to process their application.

RECEIPT OF WRITTEN APPLICATION (120 business day clock starts)

- The park has up to 10 business days from receipt of application to acknowledge such receipt and indicate in writing whether the park's answer will be a yes, no or maybe. (See page A5-54 for detailed explanation.) If for some reason, the park manager is unavailable to make this decision, that fact will be noted in the Administrative Record, and the 10 business day clock will recycle until the manager returns or the manager's designee makes the decision. The applicant will be notified of the delay and that notification will also be recorded in the Administrative Record. However the 120 business day clock does not stop. This also satisfies the GSA requirements imposed on all Federal agencies.

- If the answer appears that it will be no, the park invites the company in to explain it's objections and offers a chance for mitigation if such exists. If mitigation is not possible, the park details the reasons in writing.
- If the answer appears that it will be yes or maybe, the park acknowledges that in writing and invites the company in to discuss the next steps.

- On or before day 10, perform the following simultaneous actions:
    - notify other Telecommunications companies in area
    - initiate NEPA/NHPA compliance (applicant pays all costs)
    - determine appraised or comparison value fee amount
    - estimate of costs to applicant
    - initiate FOTSC technical review and analyze resultant comments upon receipt
    - other as needed

- On day 60 EA received
    - initiate public comment period
    - publish notice in Federal Register

- On day 90 - 100 park staff review of all submitted comments
    - analyze compliance documents to issue FONSI or require EIS
    - consider mitigation of needed
    - reconsider FOTSC comments
    - consider public comments
    - consider other factors as applicable

- On day 100 park makes final decision
    - if final decision appears to be no, park will meet with company to explain reasons and discuss possible mitigation. If no mitigation possible, park will issue written final negative decision with reasons.
    - if final decision is yes, park will type ROW permit in final and send to company then regional office for signature.

- On day 120, permit should be issued and in effect, copy of signed permit sent to FOTSC for technical record purposes.

**GUIDANCE**

When considering the potential or dealing with an actual request for a WTF site(s) on park property, the superintendent should consider these points.

- Superintendents who have or expect to receive multiple requests for WTF sites will encourage co-location where possible.

- ROW permits will only be issued for those requests for which there is no practicable alternative and will not result in a derogation of the resources, values and purposes for which the park was established.

- Except as specifically provided by law or policy, there will be no permanent road, structure or installation within any study, proposed, or designated wilderness area (see Wilderness Act, 16 U.S.C. § 1131). The NPS will not issue any new right-of-way permits or widen or lengthen any existing rights-of-way in designated or proposed wilderness areas. This includes the installation of utilities.

- Superintendents will only accept applications for a WTF site from a Federal Communications Commission (FCC) licensee authorized to provide the service.

- The public will be given the opportunity to participate fully and comment on applications for right-of-way permits to construct WTF sites on park property.

- Superintendents may wish to quickly identify critical resource areas, operational needs, and existing infrastructure. This is a completely optional process. Such an effort is intended only to provide basic, preliminary information so as to expeditiously inform the park manager about potentially suitable WTF sites, or areas where WTF facilities may not be approved. This process is NOT conducted in lieu of coordinated NEPA-NHPA compliance. If conducted at all, it may be done prior to or after receipt of a complete application. It may be most appropriate when the park has or expects to receive multiple applications for multiple sites, or in parks that encompass large or geographically dispersed acreage, variable topography, or complex resources. It should be accomplished by park staff as appropriate. This exercise may also be used by the park manager to open a dialog with the potential applicant(s), or for any other reason the manager deems appropriate.

- The superintendent assures proper compliance (for instance NEPA, NHPA, etc.) is accomplished for each WTF application. Compliance may be performed by park staff or contractor; the applicant is responsible for payment of all compliance costs regardless of who performs them.

- Parks may use standard procedures to determine the land and/or facility use fee for WTF sites.

- Parks will encourage meetings with WTF applicants at any time during the decision making process as necessary, particularly if the park is considering denying the application. In such instances, the applicant will be given an opportunity to discuss the pending application and the park's concerns before a final decision is made.

- Parks will consider the safety of the visiting public as a factor when reviewing WTF applications. Public safety, in this context, refers to telephonic access to emergency law enforcement and public safety services.

- To the extent possible, where an EA may be sufficient to satisfy NEPA compliance, parks should seek to complete the environmental review process within 120 days of receipt of application. To the extent possible, if an EA reveals a need for an EIS, this additional process should be completed within 12 to 18 months of receipt of application. If for some reason, delays occur or are expected to occur in either the EA or EIS process, the park should inform the applicant of the probable delay, the reason(s) for it, and discuss an expected time frame for completion.

## PROCEDURES

The following procedures are for normal applications for WTF sites.

### Pre-contact Preliminary Actions

The appropriate activities for a park regarding potential WTF site(s), prior to receipt of an application for a right-of-way permit by an FCC licensee authorized to provide wireless communications services within the park's boundaries, include:

- Familiarization with NPS policy on and procedures for reviewing applications for WTF sites;
  - NPS Management Policies (8.6.4.2)
  - D.O. 53
  - 36 CFR Part 14
  - The Right-of-Way Permit Template

- Review appropriate park planning documents, and specifically any documentation of the unique resource issues concerning the park which will bear on its determination of whether proposed WTF sites will result in a derogation of park resources, values and purposes, and;

- Where a park is aware of multiple WTF providers having an interest in the same park area, the park may initiate a meeting to encourage co-location of sites**.** This would have the effect of consolidating the multiple entities the park has to deal with for compliance and other re-

views. Each company on the same tower would ultimately receive its own right-of-way permit.

- Parks should develop a mailing list of potential interested parties. This list should include all FCC licensed wireless telecommunications companies within the area, as well as those other parties who have demonstrated their interest in this or similar concerns over the years. To obtain the list of FCC licensees in your area, write to:

  (Irene Griffith)
  Federal Communication Commission
  Commercial Wireless Division
  445 12th Street SW Room 4-C132
  Washington, DC 20554

  Or call (202) 418-1315. Specify the City, County, and State you are asking for and list your name and phone number or email address they can reply to. Also specify what type of service has applied: PCS, Cell Phone, FM Radio, etc.

- Parks should develop a listing of consultants or companies from the surrounding area or those willing to travel to the area, capable of compiling NEPA and/or NHPA compliance to the park's satisfaction. This list would, at their request, be given to applicants for WTF sites for selection to complete the required compliance document(s).

Except for the above items, parks should avoid spending significant time or resources with interested FCC licensees until the licensee has submitted an application for a right-of-way permit.

**Initial Contact**

Once a park has been contacted by an FCC licensee authorized to provide a wireless communications service, the superintendent should inform the Licensee of the requirements of applicable laws, NPS policy, these procedures, and 36 CFR Part 14 for obtaining a right-of-way permit. In addition, the potential applicant should be advised that information submitted in applications for rights-of-way are subject to disclosure under the Freedom Of Information Act (FOIA). All applicants must advise the park whether they consider any of the information they are being asked to submit as being protected information containing trade secrets or confidential, commercial, or financial information exempt from disclosure under FOIA. Superintendents, after review of the material claimed for protection from public disclosure, may request a justification from the applicant to assist the superintendent in making a decision pursuant to the FOIA. Further guidance on this subject may be obtained from the Solicitor's office and/or the FOIA officer.

The superintendent may discuss proposed sites with the licensee to determine which zones, areas, locations, and types of installations are likely to not result in a derogation of park resources**,** values and purposes.

Superintendents should review the location of existing utility systems and roads. If utility service and access to the proposed site is already in existence, the park must consider what additional impacts the proposed use might cause and the possibility of additional utility rights-of-way needed. If access to the proposed site is not in existence, the park must evaluate what impact construction of an access road connecting existing roads with the proposed site would have, as well as the required additional utility services. **The potential applicant should be made aware that the NPS decision process considers the full footprint of a WTF site: The tower-antenna-base structure facilities; the access road required for construction and service; and the supplying power and telephone lines.** Should any of these disparate parts be found to cause unmitigatable impacts, the entire application would be denied.

Superintendents should provide an estimate, to the extent possible, of the anticipated timetable for processing a right-of-way application and permit if the WTF site is approved. An estimate should also be provided, if possible, of the anticipated costs, including the land and/or facility use fee required pursuant to 36 CFR Part 14. A formal appraisal or comparability determination, however, should wait for receipt of an application for the use.

If the requested use is to place an antenna on an existing tower already under NPS permit (co-locate), then the applicant must first obtain permission, in writing, from the existing permittee. After such permission has been obtained, the applicant must then apply for a separate right-of-way permit from the NPS by following the applicable procedures listed below. A copy of the written permission referred to above, shall be attached to the formal application.

## Application Form

An application is the first formal notice that the applicant is requesting use of park property. Generally, the applicant may be asked to submit a minimum of four copies of the Application depending on individual park requirements (one for the Administrative Record, one for the park's files (if different from the Administrative Record), one for the Field Operations Technical Support Center (FOTSC), and one for other review purposes if required). The park must use "STANDARD FORM 299 APPLICATION FOR TRANSPORTATION AND UTILITY SYSTEMS AND FACILITIES ON FEDERAL LANDS" as their application form. This form has been included in this Appendix as Exhibit 8. It is presented there without headers or footers for ease of reproduction. Electronic versions of this form may also be requested from the Regional right-of-way coordinator and are also available on the Internet through the BLM homepage. While the form covers the basic information needed, some parks may need additional de-

tails to cover special concerns. This additional information should be specifically requested as attachments to Standard Form 299. The information or requirements listed below should be considered as fundamental for all applications.

- Full description of the requested land or facility use in the park, including proposed number of sites, types of sites, equipment and antennas (including structures) to be located at each site, required new (or modification of existing) electrical and telephone service for each site, location of the sites in the park, and existing or proposed roads to be used for access to the proposed site.

- Maps showing the "before" and "after" service levels and signal strength for the proposed WTF site(s).

- Maps showing all other WTF sites and their coverage operated by the applicant up to a 15 mile radius (or other distance determined appropriate by the superintendent).

- Propagation maps from the applicant showing its proposed buildout of sites within a 15 mile radius of the proposed site within the next five years (or other distance or time frame determined appropriate by the superintendent). Note that this information may be exempt from disclosure under FOIA.

- For each proposed site, a schematic site plan and elevations showing the equipment and antennas to be installed, including supporting structures, connections to telephone and electrical service, and how the applicant will access the site for construction (with a list of construction equipment to be used) and ongoing maintenance.

- Copy of the FCC license authorizing the applicant to provide wireless telecommunications services for that area, along with a map showing the boundaries of the authorized service area and the relationship of that area to the park's boundaries.

- Payment of the one time application fee required pursuant to 36 CFR Part 14 (minimum fee $250.00 for WTF sites), and submitted with the completed application.

- A realistic photo-simulation acceptable to the park depicting what the proposed WTF(s) and access, if applicable, would look like after installation.

**Receipt of Written Application**

Receipt of a written application and application fee in the park starts a 120 day clock. Note that in every instance, this refers to business days (normally Monday through Friday). See further discussion of the time schedule below. NPS policy requires that to the extent possible, where an EA may be sufficient to satisfy NEPA compliance, parks should seek to complete the compliance and permitting process within 120 days of receipt of an application. Should delays occur or be expected to occur, the park must inform the applicant of the probable delay(s) and discuss an expected time schedule.

The procedure below assumes there are no delays, the information received is sufficient to go on the next phase, and all steps are completed satisfactorily. Should this not be the case, the step must be repeated and the time clock resets to the beginning of the current step or a time frame suitable to accomplish the work needed. The superintendent will, pursuant to the Telecommunications Act of 1996, D.O. 53**,** Deputy Director Galvin's memorandum, and these Procedures, take the following actions:

- If the park determines that more applications for a particular WTF site have been received than can be accommodated at that location without impairment or derogation of park resources, values or purposes, then the park may conduct a sealed bid process using the applicable GSA or other procedures to select the applicant(s) who will then be allowed to submit the additional compliance documentation to obtain a right-of-way permit.

- Develop an Administrative Record documenting all work related to review of the Application. Include all prior contacts with applicant if relevant.

- Within the first 10 days after receipt of an application, the park will use the submitted material to come to an initial decision whether the park's answer will be yes, no or maybe. Then, by no later than the end of that initial 10 day period, the park will acknowledge receipt of the application and indicate the park's initial decision in writing to the applicant. Experience in the field has shown that those requests that are a definite "yes" or "no" are usually relatively obvious. For instance, a request to co-locate an antenna on an existing tower in previously disturbed ground, or on top of a building where there are already other antennas and an established service road and utilities, would normally receive a "yes" answer unless there are unusual circumstances. Equally, a request to site a new antenna on top of the Washington

Monument, Half Dome, or in a wilderness, for instance, would normally receive a "no" answer, again unless there are unusual circumstances. Everything else would be "maybe," including those cases of unusual circumstances mentioned above. It is expected that the vast majority of applications (probably better than 90%) will fall into the "maybe" range. That is why the initial decision period is only a maximum of 10 days. This decision does **NOT** say we will issue a permit. It is only to decide whether the answer to the request is obviously *yes*, or *no*, and if not one of those, then it's *maybe*, and this decision can usually be done very quickly.

- If it appears that the request will be denied, the park invites the company in to explain it's objections and offers a chance for the company to come up with mitigation if that is possible. This is done **PRIOR** to issuing a written denial. If mitigation is not possible, then the park details the reasons in a written denial to the company.

- If the answer appears that it will be yes or maybe, the park acknowledges that in writing and invites the company in to discuss the next steps and the time frame involved.

- Following a "yes" or "maybe" decision, and no later than 10 days after receipt of the application, the park will perform the following simultaneous actions. Note that the more expeditiously the park moves on the early (easier) steps of this procedure, the more time it allows itself to complete the more complex ones later.
    - mail notice to the park's list of potential interested parties advising of receipt of application, if the park has developed such a list, or by posting a notice of receipt of application for a WTF site in a newspaper of general circulation in the affected area and/or in the nearest metropolitan area newspaper. The purpose of this notice is to notify other FCC licensees authorized to provide wireless communication services within or adjacent to park boundaries, and to promote public and local governmental participation. By these methods, the park will notify other Telecommunication companies and other interested parties in the same area of receipt of the application. This action is strictly a courtesy notification mostly aimed at other telecommunication companies who might have similar interests, not a request for comments. Responses, if any, must reach the park within 10 days of the notice being published.
    - If the park chooses not to do all or any part of it in-house, send a written request to the applicant to initiate NEPA, NHPA and/or any other compliance required by either performing their own or choosing one or more of the companies on the established list of consultants acceptable to the park. The park will be the approving official for

any compliance documentation developed. All compliance documents must be completed prior to day 60 after receipt of application.

- Initiate action required to determine fee for use of the NPS land or facility requested in the application, unless this fee has already been determined. This may be accomplished by appraisal or by comparability with similar fees in the surrounding area.
- Initiate FOTSC technical review. The park will send a copy of the application and all drawings showing RF coverage, location of tower and or antenna array, and other information needed to base a technical opinion on, to the Chief of Radio Frequency Management, FOTSC, Denver, to initiate a technical review. The FOTSC review will determine if the proposed use will conflict with communications facilities and technologies, not only for the currently applied for use, but those applications proposed in the future as well.
- Initiate any other process needed to determine presence or absence of impairment or derogation of resources, values or purposes for which the park was established.
- Meet with park staff to determine estimate of current and projected costs required for the permit approval process.
- Meet with applicant to advise current stage of progress as well as costs and fee estimates for remainder of process.
- In addition, the applicant will submit the following information:
    - Documentation as to how the applicant will prevent the proposed WTF site from causing interference with other existing sites operated by the Service or other private parties, either in or adjacent to the park.
    - A study prepared by an independent licensed electrical engineer calculating the non-ionizing electromagnetic radiation (NIER) which will result from the proposed WTF site (each site for multiple-site applications), and also the total NIER for co-location sites or the site in combination with nearby sites, and a statement comparing these figures and stating that the proposed facility will meet applicable NTIA standards for reducing radiation hazard to a harmless level. Note that if the proposal is approved, the resultant right-of-way permit should require that the actual NIER should be measured by an independent licensed electrical engineer after the wireless communications facility site(s) has commenced operation. A copy of the study described above, as well as any resultant reports, must be sent to the FOTSC, Denver files.

- On or before day 60 after receipt of application, all compliance documents are completed and received in park. If complications arise that delay completion of the document(s), the park and the applicant shall meet and discuss a possible extension of the time limit. Should such extension(s) be granted, the 120 day clock will pause until the documents have been com-

pleted and delivered to the park, and resume at the 60 day mark as if the delay and extension had not occurred. Such actions will be thoroughly documented in the Administrative Record.

- Upon receipt of the required compliance documentation, the park will then take the following simultaneous actions:
    - Initiate a 30 day public comment period by posting a notice in the newspapers as above and in the Federal Register of availability of the EA for comment. The procedures for submitting Federal Register Notices are as follows. First, as soon as the park determines the need to post a notice, or before if possible, contact the Federal Register Publications Coordinator (currently Debra Melton) via telephone (202 208-4578), email, or fax (202 501-6904). That person will describe the process and supply you with examples of the four required items to get something published in the Federal Register. These are: 1) An original and four copies of the proposed Federal Register Notice signed by the superintendent; 2) A diskette containing a true copy of the notice and labeled with the title of the notice; 3) A letter signed by the superintendent and addressed to - Reymond Mosley Office of the Federal Register Washington, D.C.; and 4) A requisition to pay for the cost of the publication. The cost is currently $135.00 per column. This cost is directly recoverable from the applicant.
    - Federal Register Notices are to be mailed with a cover letter to:

    Manager, Washington Administrative Program Center

    Attn: Federal Register Publications Coordinator

    National Park Service

    Main Interior Building

    1849 C. St. N.W. Mail Stop 3316

    Washington, D.C. 20240

    - The park staff will examine and analyze all compliance documents submitted, then make a finding of: a categorical exclusion; issue a FONSI; or issue a notice to require an EIS. (Should the findings require an EIS, the clock recycles to from 12 months to 18 months pending completion of that document and ROD.)

- On or before day 90 - 100, all public comments and analysis should have been received. The park will:
    - Reconsider FOTSC comments received in light of additional information as appropriate.

- Consider the public comments received.
- Consider other factors as applicable.

- On or before day 100, park makes final decision.
  - If the final decision appears to be no, the park will meet with the applicant prior to issuing a written denial of the request and explain the reasons for their decision. The applicant may suggest possible mitigation at this point. If the mitigation is acceptable to the park, the applicant may be asked to resubmit information and documentation in support of that mitigation. Should this submittal take place, the 120 day clock will recycle to this point. If no mitigation is possible, the park will issue a written denial to the applicant. The letter of denial must include the relevant portions of the administrative record detailing reasons for the denial, state that the applicant may appeal the park's decision, and include the name and address of the official to whom the appeal should be sent. Any action described in this section will be thoroughly documented in the Administrative Record.
  - If the final decision is yes, the park will document that decision in the Administrative Record then prepare three original copies of the right-of-way permit and send all three to the applicant for their signature. The applicant will examine the permit in detail, then sign all three copies of the permit with original signature, then send all three back to the park. These three signed copies, along with a cover memorandum requesting approval of the WTF site(s) and permit, a copy of the approval from FOTSC, a copy of all signed NEPA and NHPA compliance documents and all other approving documentation, is then forwarded to the Regional Director for approval and signature.
  - The regional office will retain one copy of the permit for it's files (if desired) and return two copies of the fully executed permit to the park. The park will mail one original copy of the permit to the permittee and retain the second in it's files.
  - The park will make a machine copy of the fully signed and executed permit and, with a copy of the maps and drawings, send the set to the FOTSC for technical record purposes.

## Fees and Charges

The policies and procedures found in Chapter 10, Management of Permit Fees, and Appendix 5, Rights-of-Way, apply to permits for Telecommunications Facilities. Because of the special nature of these facilities, there may be additional factors to consider. The applicant shall also be responsible for:

- All costs associated with review and approval of the application package including but not limited to the FOTSC review, and all costs involved in posting and review of the public announcement and Federal Register notices.

- The NPS recognizes that Service and/or public benefits may result from authorizing the use of park lands for WTF sites, including consideration of the public safety. Benefits such as real property or air time, proposed by an applicant, would be treated as donations, and must be in addition to full payment of all fees and cost recovery (i.e., cannot be used to offset fees and/or charges).
- At the discretion of the superintendent, costs of review and processing may be collected from the applicant at any time during the process, for instance up front, during the approval process, or prior to execution of the right-of-way permit by the Regional Director. These costs include but are not limited to those for any special in-park assessments (if applicable), the appraisal or comparability studies, all compliance, and other costs required by the park associated with permit determination and issuance.

- The facility and/or land use fee for the right-of-way permit required by 36 CFR Part 14 must be determined and the applicant provided with that figure prior to issuance of the permit. In determining the facility and/or land use fee, parks should bear the following in mind:
    - the Service is required to determine the fair market value fee for use and occupancy of NPS facilities and/or lands. While it may be appropriate for a park to accept information on comparable fees from an applicant, (as well as other sources), the final determination of fees is solely the responsibility of the park and should reflect fair market value (excluding any figures for cost recovery or profit).
    - Parks may determine the facility and/or land use fee using sound business management principles, including but not limited to appraisal, or comparability with similar uses within the surrounding area, such as by using annually updated USFS RENT SCHEDULE FOR COMMUNICATIONS USESA (FR 68074 Dec. 30, 1997). If more than one of the above methods is employed to determine the fee, the higher figure will always be used.

## The ROW Permit

The authority for issuing right-of-way permits for telecommunication purposes is found in 16 U.S.C. 5. Requests for WTF sites will be treated the same as those for any other right-of-way in the park in that they are subjected to the same scrutiny for impairment or derogation of resources, values and purposes, including NEPA and cultural resource compliance. There are, however, major differences between WTF and other utility rights-of-way. These include the technical review and approval required by the Chief of Radio Frequency Management, Field Op-

erations Technical Support Center (FOTSC), Denver, and the possible addition of a separate access to the site for purposes of construction and operation.

The terms and conditions of right-of-way permits for WTF sites, in addition to those listed in Exhibits 4 and 5, will also reflect the Service's objectives for such sites, including but not limited to:

- creating the maximum potential for future co-location; requiring stringent visual and other mitigation measures;

- maximizing use of existing park utilities and infrastructure precluding any other use or sub-permitting by the applicant except as authorized;

- incorporating the best practices of other Federal, state, and local agencies in approving such sites on public lands;

- List specific resource protection measures and possible mitigation for the required access road to the WTF site as well as additional utilities needed to service/supply the site. These measures should include concerns during both construction and operation of the facilities.

- The permit should also contain a provision that in addition to termination for cause, it will be terminated in the event of the expiration, transfer, or revocation of the permittee's FCC license for provision of the WTF service.

- The term of the permit will be for no more than 10 years or the remaining term of the applicants FCC License, as applicable. The superintendent may recommend to the Region a waiver to lengthen the term of the permit upon request from the applicant. Such recommendation may, among other things, be based upon consideration of the cost of the facility, its useful life, impacts on visitor use, and long term affects on and/or loss of the use of park land. Both request and decision must be in writing and recorded in the administrative record.

- A draft copy of the right-of-way permit, especially the conditions, should be given to the applicant for comment.

- The permit must contain a provision that in the case of expiration of the permit, or non-use or abandonment for a length of time not to exceed two years or as determined by the superintendent, the permittee shall remove the antenna and all associated appurtenances and restore the site to it’s original condition prior to approval of the permit. In addition, the permittee shall be responsible for all costs of removal of the antenna and appurtenances, and restoration of the land or facility used in the permit to it’s original condition or better. This condi-

tion includes any construction, towers, buildings, access roads, and utilities involved with the original permit.

- The legal description must include the access corridor and supplying utilities as part of the WTF site footprint.

If there have been no changes from the standard form Right-of-Way Permit pre-approved by the Solicitor's Office, no further legal review will be required at the regional level. If, however, circumstances have required deviations from the standard form, the permit will require Solicitor's Office review.

Once signed by the Regional Director, the right-of-way permit is in effect and construction may begin. The park will manage the permittee's construction of its WTF site(s) according to the park and Service's standards.

## Other Considerations

For proposed sites, or zones, locations, or areas with a potential for WTF sites within a critical viewshed, either inside the park or outside its boundaries on property not controlled by the Service, the park should coordinate its review of the proposal with the interested parties (i.e., county, municipal, State, Federal and private landowners). The purpose of coordinating activities with surrounding jurisdiction would be to minimize the impacts.

Because of the potential impacts associated with WTF sites, parks need to be aware of what is happening in surrounding areas. There are a variety of special situations that might arise. One example is a park being approached for permission to install a WTF site(s) (particularly PCS or cellular service) on properties where the Service holds a scenic easement. Another example is a proposed site outside park boundaries creating a significant viewshed impact over which the Service has no control. It is entirely possible that the Service might suggest relocating the site to an acceptable location on park property where the viewshed impact would be significantly lowered. An example of this exact instance has already occurred at Little River Canyon NP.

Another example would be when a WTF is proposed for construction adjacent to park land, but the only practical access is across park land. This situation could be a relatively frequent occurrence. The key issue here is that roads in parks that are solely for the purpose of access to a telecommunication site (or any utility) but not incidental to an actual permit, are not authorized. There is, however, an interesting side issue that might apply, depending on circumstances. An access road for the purpose of first constructing, then maintaining utility rights-of-way, such as the power and telephone lines needed to service the Telecommunication Site, would be author-

ized as incidental to those rights-of-way, as described in the Exhibit above. Certainly, at least one of the factors the superintendent would have to consider when making a decision on the utility right-of-way (power and phone), would be the possible derogation from the additional traffic/use caused by the WTF site.

In special circumstances, where a right-of-way permit may not be the appropriate authorizing instrument (i.e. the Service is being asked for a modification of a scenic easement), the procedures set forth above must be followed except for the requirement for a permit. While some requirements may not apply, for example the collection of a facility and/or land use fee, it may be possible to obtain other considerations. In the scenic easement example, the Government would likely have paid a lesser price for the scenic easement if the owner had retained the right to place WTF sites, and therefore it may be appropriate for the Government to receive a portion of the rent collected by the property owner until the acquisition cost of the easement has been paid off. Another example would be where the Service approves installation of a WTF site within a scenic easement in return for the granting by the property owner of new scenic easements protecting other sensitive viewsheds.

Superintendents are encouraged to work closely with the Regional Office to respond to the issues and opportunities presented by such special circumstances.

**References**

16 U.S.C. § 5
16 U.S.C. § 79
43 U.S.C. § 1764(b)
36 CFR Part 14
Director's Order 53
RM-53, Chapters 7 and 9
RM-53, Appendix 5 and Exhibit 6
Right-of-Way Permit Template

| | | |
|---|---|---|
| Right-of-Way Permit 4290-89-016 | Issued: | 06/14/89 |
| Amendment Number 02 | Renewed: | 06/13/99 |
| | Expires: | 06/13/09 |

Right-of-Way Permit 4290-89-016, issued 06/14/89 to the Virginia Electric and Power Company, Richmond, Virginia (hereinafter Permittee), renewed by Amendment Number 01 06/13/99 and describing existing multiple overhead and underground lines in the Yorktown, Virginia area, is hereby amended to change the location of one portion of the line described in the existing right-of-way permit as Master Parcel 2, Tract 1.

The effect of the change will be to abandon in place the existing line currently running through the center of the Yorktown Battlefield and reroute a new line along the pavement edge of State Route 704 and Union Road. Permittee will also replace in place an existing power pole.

The purpose of the change is first to replace a faulty line and second to move the line so that the current and any future repair work will not constitute a visual intrusion to the historic vista of the Yorktown Battlefield.

This Amendment is categorically excluded from NEPA compliance under 516 DM 6, Appendix 7, Section 7.4, Paragraphs C (16) and C(13).

## LEGAL DESCRIPTION

The original drawing describing Master Parcel 2, Tract 1, sheet 2 of 5, is hereby amended to show both the abandoned line and the new line placement. All portions of the new line are underground. The following metes and bounds is a centerline description for the new section only and stops at the power pole to be replaced. At that point, Master Parcel 2, Tract 1 continues as previously described.

### Master Parcel 2, Tract 1

Starting at a true point of beginning, said point being Master Point 2 as identified herein and further shown on the revised drawing attached, thence underground S 74$^{o}$ 15' E for a distance of 98 feet, thence continuing along and maintaining a distance of 2 feet, more or less, from the western pavement edge of State Route 704, S 13$^{o}$ 35' W for a distance of 55 feet, thence under State Route 704, S 77$^{o}$ 58' E for a distance of 31 feet, thence continuing along and maintaining a distance of 2 feet, more or less, from the eastern pavement edge of State Route 704, S 12$^{o}$ 29' W for a distance of 320 feet, thence continuing along the edge of pavement of the north side of Union Road, S 77$^{o}$ 31' E for a distance of 68 feet, thence S 82$^{o}$ 04' E for a distance of 182 feet, thence S 70$^{o}$ 32' E for a distance of 73 feet, thence S 68$^{o}$ 20' E for a distance of 290 feet, thence S 89$^{o}$ 40' E for a distance of 108 feet, thence N 74$^{o}$ 21' E for a distance of 141 feet, thence N 87$^{o}$ 22' E for a distance of 66 feet,

thence S 80$^o$ 51' E for a distance of 223 feet, thence S 75$^o$ 53' E for a distance of 93 feet, thence S 59$^o$ 31' E for a distance of 118 feet, thence S 57$^o$ 31' E for a distance of 145 feet, thence S 55$^o$ 41' E for a distance of 166 feet, thence leaving Union Road and continuing underground N 42$^o$ 59' E for a distance of 236 feet and arriving at a power pole which will be replaced. From this pole, also described in the original right-of-way permit, Master Parcel 2, Tract 1 continues as described in the original right-of-way permit.

## FEES AND REIMBURSEMENT OF COSTS

The original segment of Master Parcel 2, Tract 1 involved in this Amendment, now to be abandoned in place, measured 2,297 feet. The revised placement measures 2,419 feet, an increase of 122 feet. Because this change in route is being done at the request and for the benefit of the National Park Service, any charge or additional fair market value fee is waived and the fee for Master Parcel 2, Tract 1 will remain the same as currently charged until the original permit expires on June 13, 1999 and fee and charges are reevaluated. Since the new pole is a one for one replacement, there is no fee involved.

## TERMS AND CONDITIONS

1. All terms and conditions detailed in right-of-way permit 4290-89-016 remain in effect and apply to the new placement of the above described power line.

2. Permittee agrees to hire an archeologist and have said archeologist on scene during the entirety of the construction phase of the project. The archeologist will monitor all ground disturbing activities associated with this project. If any resources are located, the Permittee archeologist will immediately halt construction activity and contact Regional Archeologist David Orr before proceeding further with ground disturbing activities in the vicinity of archeological resources. Additionally, the Permittee archeologist will prepare a written report of findings during construction monitoring, one copy each for review by the Regional Archeologist and the Superintendent, Colonial National Historical Park.

3. The United States shall not be liable for any claims arising from work stoppages as described above.

4. The Superintendent, Colonial National Historic Park, shall be notified in writing no less than two weeks prior to the start of any construction, maintenance or repair on Park lands. An on-site meeting will be conducted no less than one week prior to start of construction between representatives of the Park and the Permittee construction/maintenance supervisor to determine and clarify the scope of the project and Park expectations. The Permittee hired archeologist will attend this meeting. The Permittee construction/maintenance supervisor will contact the Park on the morning of the first days work and each morning thereafter prior to entering the Park, advising the location and extent of work crews in the Park. Except in extraordinary situations, as determined at or prior to the on-site meeting

above, all work on Park lands will be conducted on a Monday through Friday, 8:00 am through 5:00 pm basis. The Permittee shall notify the Park of emergency situations as soon as practical. All work on Park lands shall be completed to the satisfaction of the Superintendent or his representative.

5. Both during and upon completion of the construction phase of the project, Permittee agrees to take all measures necessary to curtail erosion and sedimentation caused by the excavation, and further to restore and revegetate the area to its original condition as agreed to at the preconstruction meeting as described above. Furthermore, Permittee agrees to meet, at a minimum, all state and local erosion and sedimentation regulations.

This Amendment to right-of-way permit 4290-89-016 authorizes the construction, operation and maintenance of the above described underground power line and power pole.

Issued at Yorktown, Virginia, this 24th day of May, 2000.

/signed
Superintendent
Colonial National Historical Park
National Park Service
United States Department of the Interior

The undersigned hereby accepts this Amendment subject to the terms, covenants, obligations, and reservations, expressed or implied in the original, as renewed by Amendment number 01 on 06/13/99, and this Amendment number 02 to Right-of-Way Permit 4290-89-016.

ACCEPTED THIS 26th DAY OF May, 20 00.

/signed
C. Wayne Williamson
District Manager
Virginia Electric and Power Company

/signed
Attest

STANDARD FORM 299 (1/99)
Prescribed by DOI/USDA/DOT
P.L. 96-487 and Federal
Register Notice 5-22-95

# APPLICATION FOR TRANSPORTATION AND UTILITY SYSTEMS AND FACILITIES ON FEDERAL LANDS

FORM APPROVED
OMB NO. 1004-0060
Expires: December 31, 2001

FOR AGENCY USE ONLY

Application Number

Date Filed

NOTE: Before completing and filing the application, the applicant should completely review this package and schedule a preapplication meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the preapplication meeting.

1. Name and address of applicant *(include zip code)*

2. Name, title, and address of authorized agent if different from item 1 *(include zip code)*

3. TELEPHONE *(area code)*

Applicant

Authorized Agent

4. As applicant are you? *(check one)*
   a. ____ Individual
   b. ____ Corporation*
   c. ____ Partnership/Association*
   d. ____ State Government/State Agency
   e. ____ Local Government
   f. ____ Federal Agency

   ** If checked, complete supplemental page*

5. Specify what application is for: *(check one)*
   a. _____ New authorization
   b. _____ Renewing existing authorization No.
   c. _____ Amend existing authorization No.
   d. _____ Assign existing authorization No.
   e. _____ Existing use for which no authorization has been received *
   f. _____ Other*

   ** If checked, provide details under item 7*

6. If an individual, or partnership are you a citizen(s) of the United States? ____ Yes ____ No

7. Project description (describe in detail): (a) Type of system or facility, *(e.g., canal, pipeline, road);* (b) related structures and facilities; (c) physical specifications *(Length, width, grading, etc.*); (d) term of years needed: (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction *(Attach additional sheets, if additional space is needed.)*

8. Attach a map covering area and show location of project proposal

9. State or Local government approval: _____ Attached _____ Applied for _____ Not Required

10. Nonreturnable application fee: _____ Attached _____ Not required

11. Does project cross international boundary or affect international waterways? _____ Yes _____ No *(if "yes," indicate on map)*

12. Give statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested.

(Continued on reverse)

This form is authorized for local reproduction.

13a. Describe other reasonable alternative routes and modes considered.

b. Why were these alternatives not selected?

c. Give explanation as to why it is necessary to cross Federal Lands.

14. List authorizations and pending applications filed for similar projects which may provide information to the authorizing agency. *(Specify number, date, code, or name)*

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal (construction, operation, and maintenance); (b) estimated cost of next best alternative; and (c) expected public benefits.

16. Describe probable effects on the population in the area, including the social and economic aspects, and the rural lifestyles.

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability.

18. Describe the probable effects that the proposed project will have on (a) populations of fish, plantlife, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

19. State whether any hazardous material, as defined in this paragraph, will be used, produced, transported or stored on or within the right-of-way or any of the right-of-way facilities, or used in the construction, operation, maintenance or termination of the right-of-way or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 et seq., and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERClA Section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

20. Name all the Department(s)/Agency(ies) where this application is being filed.

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information submitted is correct to the best of my knowledge.

| Signature of Applicant | Date |
|---|---|
| | |

Title 18, U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

| SUPPLEMENTAL | | |
|---|---|---|
| NOTE: The responsible agency(ies) will provide instructions | CHECK APPROPRIATE BLOCK | |
| I - PRIVATE CORPORATIONS | ATTACHED | FILED* |
| a. Articles of Incorporation | | |
| b. Corporation Bylaws | | |
| c. A certification from the State showing the corporation is in good standing and is entitled to operate within the State | | |
| c. Copy of resolution authorizing filing | | |
| e. The name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote and the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate. | | |
| f. If application is for an oil or gas pipeline, describe any related right-of-way or temporary use permit applications, and identify previous applications. | | |
| g. If application is for an oil and gas pipeline, identify all Federal lands by agency impacted by proposal. | | |
| II - PUBLIC CORPORATIONS | | |
| a. Copy of law forming corporation | | |
| b. Proof of organization | | |
| c. Copy of Bylaws | | |
| d. Copy of resolution authorizing filing | | |
| e. If application is for an oil or gas pipeline, provide information required by item "I-f" and "I-g" above. | | |
| III - PARTNERSHIP OR OTHER UNINCORPORATED ENTITY | | |
| a. Articles of association, if any | | |
| b. If one partner is authorized to sign, resolution authorizing action is | | |
| c. Name and address of each participant, partner, association, or other | | |
| d. If application is for an oil or gas pipeline, provide information required by item "I-f" and "I-g" above. | | |

* If the required information is already filed with the agency processing this application and is current, check block entitled "Filed." Provide the file identification information *(e.g., number, date, code, name)*. If not on file or current, attach the requested information.

NOTICE

The Privacy Act of 1974 provides that you be furnished the following information in connection with information required by this application for an authorization.

AUTHORITY: 16 U.S.C. 310: 5 U.S.C. 301.

PRINCIPAL PURPOSE: The information is to be used to process the application.

ROUTINE USES: (1) The processing of the applicant's request for an authorization. (2) Documentation for public information. (3) Transfer to appropriate Federal agencies when concurrence is required prior to granting a right in public lands or resources. (4)(5) Information from the record and/or the record will be transferred to appropriate Federal, State, local or foreign agencies, when relevant to civil, criminal or regulatory investigations or prosecutions.

EFFECT OF NOT PROVIDING INFORMATION: Disclosure of the information is voluntary. If all the information is not provided, the application may be rejected.

DATA COLLECTION STATEMENT

The Federal agencies collect this information from applicants requesting right-of-way, permit, license, lease, or certification for the use of Federal lands.

The Federal agencies use this information to evaluate the applicant's proposal.

The public is obligated to submit this form if they wish to obtain permission to use Federal lands.

A reproducible copy of this form may be obtained from the Bureau of Land Management, Division of Lands, 1620 L. Street, Room 204, Washington, D.C. 20036.

APPLICATION FOR TRANSPORTATION AND UTILITY SYSTEMS
AND FACILITIES ON FEDERAL LANDS

GENERAL INFORMATION
*ALASKA NATIONAL INTEREST LANDS*

This application will be used when applying for a right-of-way, permit, license, lease, or certificate for the use of Federal lands which lie within conservation system units and National Recreation or Conservation Areas as defined in the Alaska National Interest lands Conservation Act. Conservation system units include the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, and National Forest Monuments.

Transportation and utility systems and facility uses for which the application may be used are:

1. Canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other systems for the transportation of water.

2. Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels, and any refined product produced therefrom.

3. Pipelines, slurry and emulsion systems, and conveyor belts for transportation of solid materials.

4. Systems for the transmission and distribution of electric energy.

Department of Transportation
Federal Aviation Administration
Alaska Region AAL-4, 222 West 7th Ave., Box 14
Anchorage, Alaska 99513-7587
Telephone: (907) 271-5285

NOTE - The Department of Transportation has established the above central filing point for agencies within that Department. Affected agencies are: Federal Aviation Administration (FAA), Coast Guard (USCG), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA).

OTHER THAN ALASKA NATIONAL INTEREST LANDS

Use of this form is not limited to National Interest Conservation Lands of Alaska.

Individual department/agencies may authorize the use of this form by applicants for transportation and utility systems and facilities on other Federal lands outside those areas described above.

For proposals located outside of Alaska, applications will be filed at the local agency office or at a location specified by the responsible Federal agency.

SPECIFIC INSTRUCTIONS
*(Items not listed are self-explanatory)*

*Item*

7Attach preliminary site and facility construction plans. The responsible agency will provide instructions whenever specific plans are required.

8Generally, the map must show the section(s), township(s), and range(s) within which the project is to be located. Show the proposed location of the project on the map as accurately as possible. Some agencies require detailed survey maps. The responsible agency will provide additional instructions.

910, and 12 - The responsible agency will provide additional instructions.

13 Providing information on alternate routes and modes in as much detail as possible, discussing why certain routes or modes were rejected and why it is necessary to cross Federal lands will assist the agency(ies) in processing your application and reaching a final decision. Include only reasonable alternate routes and modes as related to current technology and economics.

14 The responsible agency will provide instructions.

15 Generally, a simple statement of the purpose of the proposal will be sufficient. However, major proposals located in critical or sensitive areas may require a full analysis with additional specific information. The responsible agency will provide additional instructions.

16 through 19 - Providing this information is as much detail as possible will assist the Federal agency(ies) in processing the application and reaching a decision. When completing these items, you should use a sound judgment in furnishing relevant information. Fore example, if the project is not near a stream or other body of water, do not address this subject. The responsible agency will provide additional instructions.

Application must be signed by the applicant or applicant's authorized representative.

Public reporting burden for this form is estimated to vary from 30 minutes to 25 hours per response, with an average of 2 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Debarment of the Interior, Bureau of Land Management, (Alternate) Bureau Clearance Officer, (WO-873), 1849 C Street, N.W., Washington, D.C. 20240, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

If additional space is needed to complete any item, please put the information on a separate sheet of paper and identify it as "Continuation of Item".

(For supplemental, see reverse)

# APPENDIX 6

## SCIENTIFIC RESEARCH AND RELATED COLLECTING

Information on the subjects covered by this Appendix are not specific to special uses, and of such a specific and sometimes complex nature that detailed guidance has been published elsewhere. This Appendix, therefore, will serve as more of a signpost to refer the reader to the proper guidance than as actual procedures.

### Natural and Social Science Research and Related Collecting

Natural and social science research and related collecting activities in parks do not fall within the definition of "special park uses" and therefore are not governed by special use permits nor by the principals specific to those uses detailed in RM-53. Instead, these activities are governed by Scientific Research and Collecting Permits and their requirements. For information about permitting natural and social science research and related collecting activities in parks, please refer to Director's Order 24, NPS Museum Collections Management; and, when they are completed, Natural Resources Reference Manual 77; Director's Order 74, Scientific Research and Collecting; and Director's Order 78, Social Science. Additional guidance may be obtained from regional science advisors or from the Associate Director, Natural Resource Stewardship and Science.

### Archeological Research

Non-NPS researchers must obtain and abide by the terms and conditions of a Federal Archeological Permit (Form DI-1991) when conducting research that will physically disturb archeological resources or collect artifacts from archeological resources on park land. Special Use Permits, Collecting Permits, and other permits will not be used in lieu of a Federal Archeological Permit. Research that will not physically disturb archeological resources and will not collect artifacts does not require a Federal Archeological Permit but the research proposal must be reviewed and approved by the NPS and a Special Use Permit may be required. The Regional Director is the official responsible for issuing Federal Archeological Permits.

The requirements for archeological research and for disposition of resulting archeological collections are set forth in 43 CFR Parts 3, 7, and 10, and in 36 CFR Part 79, as applicable. Policies are found in 519 DM, Chapter 2, Preservation of American Antiquities and Treatment and Disposition of Native American Cultural Items (1994), and in NPS Management Policies (1998:chapter 5), supplemented by D.O. 28. Specific guidance can be found in the Cultural Resource Management Guideline (1997:72) and the NPS Technical Manual for Archeological Permits (1984).

# APPENDIX 7 - AGRICULTURAL USE

Special Use Permits (SF 10-114) will only be issued for agricultural activities which meet defined objectives of restoring or perpetuating human-influenced landscapes in cultural or developed zones of NPS units. Lacking park specific legislation, agricultural permits are normally authorized under 16 U.S.C. 1-3.

In permitting agricultural use of NPS lands, the NPS will foster practices which conserve soil, protect natural waterways and groundwater, control proliferation of exotic species and avoid toxic contamination of the environment. Benefits and potential impacts of agricultural use should be carefully weighed. In no case will a permit be issued where the activity involved would degrade or destroy any natural or cultural resource. Special consideration needs to be given to riparian areas, wetlands, and protection of threatened or endangered species and their habitats.

Agricultural use permits are normally inappropriate in natural zones unless there is specific legislative authorization or mandate. Agricultural activities, including grazing, must be consistent with Management Policies. Compliance with Section 106 of the National Historic Preservation Act may be required (Refer to the Cultural Resources Management guidance).

Agricultural use permits are often perceived as a cost-effective way of achieving land management objectives. This may often be true. Advantages to the park include the potential for a permittee to carry out landscape management needed by the NPS, paying for use of the land. Payments for use and occupancy of the land usually are deposited in the General Treasury. However, payments may be deposited in park accounts where specific legislation authorizes retention of agricultural fees, the agricultural use is part of a living history program (See 16 U.S.C. 1a-2g), or when it is administered through the historic leasing program (See 16 U.S.C. 470h-3 and 36 CFR Part 18), or other leasing program (See 16 U.S.C. 1a-2(k)).

Agricultural programs are no panacea, however. A host of new costs and time-consuming responsibilities are created for administration of the program and in monitoring compliance and resource conditions. The costs to the park of providing the necessary services associated with the agricultural use may be retained by the park as reimbursable income (See Chapter 10, Management of Permit Fees). Permitted activities should be monitored throughout the term of the permit, and evaluations should be documented in writing. Any violation must be brought to the attention of the permittee, and a resolution must be agreed upon prior to continuation of activities. If farmers are uninterested in conducting agricultural operations for economic or other reasons, park personnel may carry out agricultural activities.

## Objectives of Agricultural Use

Agricultural programs are most often used to perpetuate a cultural landscape, representing a historical or modern culture. Grazing may occur in NPS units where authorized or required by

legislation or where it is a retained right when land is acquired (See Appendix 8). Pasturing of livestock may also be permitted where necessary to recreate the historic scene or where it supports park management objectives.

It is imperative that the objectives of an agricultural use or grazing program be clearly defined. A cultural landscape may be significant as the context in which a historic event occurred, or it may reflect the interrelationships between a particular culture and the land it inhabited.

Although the most obvious feature of a landscape is its vegetation, a cultural landscape consists of much more than plants. Management of agricultural activities must emphasize protection of the critical elements that comprise the cultural landscape. Critical elements of cultural landscapes include:

- Field size and other elements of land-use pattern
- Fences, walls, ditches, earthworks, and other historic structures
- Fence lines, traces, roads, and other evidence of original land-use patterns
- Structure, patterns, height, and texture of vegetation, such as the interspersion of fields, orchards, woodlots, and woodlands
- Lakes, streams, springs, and wetlands
- Topography and terrain

A Cultural Landscape Report should be prepared, detailing the cultural and natural elements significant to the cultural landscape, and establishing the basis for the landscape management program.

Landscapes in which historical events occurred were dynamic, living systems. Such a living system cannot, and should not, be frozen in time. For example, trees, which may have been used for fuel or building material, grew old, died, and were likely replaced, probably by other species. Streams overflowed their banks, and stream courses meandered. A landscape management program should provide for these changes to continue. Ecological principles must be incorporated into the management of cultural landscapes, providing for change while retaining their critical elements, if we are to effectively preserve them over the term.

## From Objectives to Implementation

Several alternative approaches to vegetation management may provide the target mix of plant heights and textures. For example, a tall grass meadow and a wheat field may provide equivalent vegetation patterns. Similarly, mowing once every few years can provide better control of woody vegetation than does grazing by cows, while avoiding the erosion and other impacts introduced by grazing activity. Each alternative should be carefully analyzed in terms of its benefits such as protection of the other landscape elements; and cost of maintenance. In developing a landscape management program, alternatives should be fully explored and their effects thoroughly evaluated.

Above all, a park agricultural program and its implementation must be consistently in line with its fundamental purpose. Where agriculture is a component of cultural landscape management, its primary purpose is to help convey to visitors an accurate understanding of a former period while ensuring that the irreplaceable evidence of that period, which is temporarily in our care, is passed on unimpaired to the future.

Historic farming methods may be used as part of a living history program. Often, however, methods that were used historically may be inappropriate in a modern context, with modern concerns such as protection of water quality, and may not fulfill NPS objectives for long-term conservation.

NPS management policies generally focus on modifying human activities rather than "hardening" the resources. For example, there is no provision for installing drain tiles or other structures to drain wet areas. Where field drains have been proposed, it has often been for the convenience of the permittee. Instead of draining what may have been historically wet sites, agricultural practices should be modified to ensure protection of unstable slopes, erodible soils, wetlands, and other sensitive resources, and to prevent the initiation of destructive processes that are difficult to arrest.

## Relationship to NPS - 77, Natural Resources Management Guideline

NPS agricultural programs also must be consistent with other laws and executive orders governing NPS management. Society has identified other values that are to be preserved in all parks, regardless of their specific management objectives. See Chapter 3 of the Natural Resources Management guidance, for considerations in agricultural uses such as pest management, fertilizers, wildlife impacts, crop selection, conservation practices, disease control, succession and diversity, wetlands, Federally listed threatened and endangered species, and exotic plants. Reference should also be made to Executive Orders addressing wetlands and floodplains.

## The Permitting Process

As has been suggested, a great deal can be done with an Agricultural Use Permit in addition to growing crops or hay. The park can realize a considerable benefit by the proper construction and management of conditions, and the exchange of fees for service. Examples of this might be having the farmer (permittee) construct wildlife browse strips adjacent to his fields, installation of irrigation ditches to improve the land, mowing of fields in addition to those under permit to save the park maintenance funding, and many other benefits. Managers should examine the park land management objectives before starting negotiating permits with perspective permittees.

In many respects, Agricultural SUPs are like any others. Often potential permittees will request this use from the park, but the park may also advertise for bids. The park is not obligated to permit agricultural use.

It is recommended that parks award Agricultural SUPs on a competitive basis unless there is a compelling reason to do otherwise. Competitive awarding of Agricultural SUPs is not required unless the Historic Leasing Program is used as authority for the use. If the Historic Leasing Program is not the authority used, 16 U.S.C. 1-3 allows the superintendent to permit uses that are not in derogation of park values, and 16 U.S.C. 1a-2g provides authority for interpretive and living history demonstrations.

The first step in a competitive selection process is an invitation for the public to apply to farm or graze the specific parcel of NPS land. This may be announced through the news media, local farm bureaus, and talking with local business people, farmers, and other people with known interest.

The purpose of the permit, its terms, requirements, special conditions, and other pertinent information regarding use of the parcel must be available for review by prospective applicants. These criteria will be incorporated into the SUP. A number of Exhibits have been attached to this Appendix to aid the park with the permitting process. Exhibit 1 shows examples of the subject-specific information normally needed to base a decision on whether or not to grant a permit. This information, as appropriate, may be added as an insert to the standard NPS Application Form. Exhibit 2 lists suggested Permit Conditions. Exhibit 3 shows a sample Crop Report, and Exhibit 4 is a sample Pest Management Proposal.

If more than one application is received for the same parcel, selection of the permittee should be based upon these two vital criteria:

- Ability to perform the work; and
- Interest in and knowledge of the agricultural permit program within the park.

Past performance of a permittee should be weighed in evaluating permit applications and renewals. The applicant who has demonstrated, or who can demonstrate, the best ability to perform the work and who has the highest interest in the agricultural program and it's purpose in the park may receive preference in the selection process.

Selection of a permittee must never reach the point where the applicant selected is the person who is able to pay the highest fee for a parcel of park land. The level of the fee must never be more important than a quality permit.

The selected permittee must understand and agree with the objectives and procedures for management of the area.

Insurance Most farming operations are inherently hazardous. Therefore it is highly recommended that permittees carry liability insurance (See Chapter 9). There are occasions when the cost of such insurance might be prohibitive for farmers with low incomes but proven track records. In such

instances, the park may use discretion and adjust fees and/or insurance requirements. At a minimum, the permit must include a hold harmless clause.

Permit Period The permit period should be such that the permittee can expect a reasonable return on the investment. Unless for experimental purposes or other short time considerations, permits for agricultural uses should be issued for a period of 3 to 5 years. Where substantial investment is needed, such as field renovation that involves several years of reduced production, the permit may have a provision for non-competitive renewal.

Fees Many factors enter into a determination of appropriate fees for Agricultural SUPs, but the most important is the need to charge fees competitive with the surrounding area. A fee comparability study must be made prior to issuing or renewing a permit. Special Park Use Coordinators can check advertisements in local papers, and speak to other farmers or the agricultural extension agent, to obtain information on fair market value for agricultural lands.

The fee charged should be at least equal to that normally charged for land of similar quality and with similar facilities in the local area (usually based on a comparability survey). The fee should take into account the special requirements of the permit, as well as any services and benefits provided by the NPS. The fee for an agricultural permit may be adjusted to compensate for use of more expensive but more appropriate pesticides, or to encourage participation in experimental programs or any of the park management objectives outlined above. Grazing use and occupancy fees in parks should be based upon comparability studies at least within the surrounding state.

Fees should be payable annually one year in advance. If the fee is to be paid with a share of the crop, each annual share should be from the first harvest and equal to what the fee would have been. If fees are to be paid in other services, a proportional share should be completed before the first growing season. Performance bonds or a deposit should be considered whenever payment is to be other than cash.

Fee receipts for use and occupancy are deposited to the U.S. General Treasury unless the park has specific legislative authority to retain these fees. Agricultural use fees also may be retained in the park through the historic leasing program, under the authority of the 1980 amendments to the National Historic Preservation Act of 1966, or where the agricultural use is part of a living exhibit and interpretive demonstration (16 U.S.C. 1a-2g). Actual costs to the park of providing necessary services associated with the special use permits may be retained by the park as reimbursable income. See Chapter 10.

Site-Specific Management Plan

A management plan for each parcel of land should be developed and appended as a condition of the SUP. The guide should specify objectives for the parcel, based on the park's Cultural Landscape Report or other documentation. Each parcel of land should be considered individually, and permit conditions should be designed to address the specific characteristics of the parcel to best achieve

NPS objectives. The site-specific plan should incorporate a recognition of the landscape as a dynamic, ever-changing system.

Site-specific plans should be developed by the NPS in cooperation with the County Extension Service of the local office of the Soil Conservation Service (Department of Agriculture.), though appropriate practices in a unit of the National Park System are likely to be much more conservative than practices that are allowable elsewhere.

Topics to be addressed in the site-specific plan should include, but are not limited to, the following:

- Croplands, hayfields, and orchards
    - Crop rotation schedule and species composition
    - Tillage methods
    - Soil testing program
    - Soil pH and fertilization
    - Integrated Pest Management (IPM) program
        - Monitoring
        - Management techniques
    - Irrigation needs, frequency, and responsibility for maintenance
    - Soil Erosion, Conservation Practices

- Grazing
    - Rotation among pastures
    - Animal units per acre per month, or number of animals per pasture during each grazing period
    - Prevention of overgrazing
    - Protection of waterways and riparian habitats
    - Renovation and improvement plan
    - Soil and water testing program
    - Soil pH and fertilization
    - Inventory and monitoring of vegetation
        - Legumes
        - Grasses
        - Weeds/exotics
    - Integrated Pest Management (IPM) program
        - Monitoring
        - Management techniques
    - Fencing plan, including design and construction standards
        - Design and construction standards
        - Maintenance program
        - Responsibility
    - Access and driveways

    - Soil Erosion, Conservation Practices

- Greenhouse Operations

    - Crops grown
    - Greenhouse maintenance
    - Energy conservation
    - Waste disposal
    - Exhibits
    - Integrated Pest Management (IPM) program
        - Monitoring
        - Management techniques

**References**

16 U.S.C. 1a-2g
16 U.S.C. 470h-3
36 CFR Part 18
NPS Management Policies 1988, 8:14, 5:6
NPS-28, Cultural Resources Management guideline
NPS-38, Historic Property Leasing guideline
NPS-77, Natural Resources Management guideline

## INFORMATION FOR AGRICULTURAL SPECIAL USE PERMIT

**Please fill in all items that apply to you or your operation. Detailed information on your agricultural and grazing experience and training will expedite your application, and be used in making a final determination in awarding a successful bid. Please note under item # 5 alternatives you propose in lieu of annual field fees e.g. mowing of adjacent non-farmed park fields once or twice a year based on negotiations with park.**

NAME

ADDRESS

PHONE NUMBER

1. Experience in Agriculture and Grazing

   1.1. Number of years in agricultural and grazing operations

   1.2. Explain in detail the types of agricultural and grazing operations in which you have experience.

   1.3. Size of operation. (Acres -- include farms you rent or lease. List each farm separately and show whether owned, rented or leased).

1.4. Farm equipment. List the number and kinds of major farm equipment that you own or lease.

1.5. Employees. List the number of farm hands that you employ full or part-time. Include family members.

1.6. Do you employ a full-time manager or operate the farm yourself?

1.7. Formal training. List any formal training you have received in agriculture or closely related subjects. List courses, dates, and places of training. Do you have college level related degree? List degree, major, date received, and college.

2. Describe any participation in clubs and agricultural related organizations. List offices held, awards won, etc.

_____
_____
_____
_____
_____

3. Do you or an employee have a current (**STATE**) license to apply agricultural related pesticides? Also, list different certifications?

_____
_____
_____

4. References. Please list three persons other than your own family who have direct knowledge of your agricultural and grazing qualifications. Please include addresses and phone numbers.

_____
_____
_____
_____

5. Are you willing to abide by the attached conditions if you are given a permit?_____

6. If not, what conditions are unacceptable to you? What do you suggest differently?

_____
_____
_____
_____

7. Are you presently under operating or receiving payments under any Federal or state agricultural programs e.g. payment in kind, conservation reserves for highly erodible lands? If so, please list.

_____
_____
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8. List any other information which you feel would help us in determining your qualifications or use this space to completely answers other questions.

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Signature of Applicant _____

Date _____

## AGRICULTURAL PERMIT CONDITIONS

The following is suggested language for use in agricultural permits as applicable. Park managers are encouraged to either use, not use, or alter this language as the particular situation warrants.

### Purpose

The NPS has set forth conditions in this permit with the intention of protecting the environment, soils, and streams. These elements will take precedence over enhancing yields if such enhancement methods may cause any adverse effect to the resources.

### Natural Resource Protection

The presence of any federally or state-listed endangered, threatened, or rare species or important habitat for such species is noted on the attached field maps. Impacts on these areas must be avoided. Areas of fields containing sinkholes along with a 10 yard buffer will remain unmowed.

### Crop Plan

Land designated for protection of wetland or riparian habitat shall not be used for agricultural purposes. These areas will be supplied to the Permittee in a map with the conservation plan described below.

The Permittee shall farm according to the recommendations in the Soil and Water Conservation Plan developed by the Soil and Water Conservation District. This plan will outline all requirements for seeding, liming, fertilizing, tillage methods, filter strips and pest management for each field.

This plan is for the purposes of haying of designated fields (see attached map). Removal of hay rolls from fields shall be by tractor to truck, to minimize any rutting or damage to park fields.

### Pest Management

Proposals for pesticide use for the coming year will be submitted by December 1. Approval for such use will be based on monitoring results. Requests for emergency pest management uses can be submitted at anytime.

All fields must be monitored for pest (such as weeds, insects, fungus) problems prior to application of any herbicide, insecticide, or other pesticide. Monitoring results must be presented to the park's natural resource management specialist for approval before application. Unauthorized use of any herbicide, insecticide, fungicide will be reason for revocation of this permit.

Accurate records will be kept of all pesticides applied, and a log of this use will be provided to the park by the Permittee on a yearly basis by December 1.

**Soil Treatment**

All lands under this permit will be tested every 2-3 years by the Park. The soil samples will be submitted to the **(STATE)** Agricultural Extension Service, to determine whether fertilizer or lime is needed. A copy of the analysis and recommendations will be supplied to the Permittee. Unless otherwise stipulated by the natural resource management specialist, the Permittee shall purchase and apply such fertilizer and lime as recommended and specified. The Permittee will contact the park's natural resource management specialist, at XXX-XXX-XXXX, at least 48 hours prior to fertilizing and/or liming. Lime and fertilizer shall be applied in accordance with modern accepted practices. Receipts for all liming and fertilizing shall be supplied to the park with the required annual report.

**Soil Conservation**

All fields will be managed with conservation tillage methods (minimum tillage or no-till). All cultivation operations will be directed across the most prominent slope to aid in controlling water runoff and soil erosion.

**Field Border/Filter Strips**

To protect areas adjacent to fields from erosion and runoff the Permittee will install\maintain herbaceous field borders where shown on the Conservation Plan map. A 50-foot-wide (or as designated in the Conservation Plan) border will be established\maintain by allowing native perennial vegetation to grow or by seeding with grass as approved by the natural resource management specialist. Stand reestablishment will be carried out by the Permittee whenever the sod deteriorates to less than 60% cover (or as resolute in the Conservation Plan or soil sample analysis). New filter strips established by seeding need not be mowed more than once every year during the August haying.

Filter strips are to be protected from damage by farm equipment and traffic. Filter strips are not to be used as roadways. Filter strips are not to be damaged with chemicals or tillage implements. Damage caused by erosion or lack of seedling vigor is to be repaired by grading and shaping, as directed by the superintendent, and by reseeding any area with less than 60% cover.

**Woody Plant Control**

All grazing fields, hay fields, fence lines, filter strips, and field borders shall be mowed by the Permittee at least once every year, during the August haying, to keep the designated fields free of woody plant growth.

**Activity Reports**

Permittee agrees to comply with the park's requirements for annual reporting of all farming activities, using the attached forms.

**Equipment Storage**

The storage of equipment overnight, shall be in those areas designated by the natural resource management specialist. Storage of equipment will only be allowed while maintaining or harvesting fields. The government assumes no liability for loss or damage to equipment due to improper storage, lack of protection from the elements, or any other cause whatsoever.

**Compliance with Laws and Regulations**

The Permittee shall comply with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the said premises are located, with regard to construction, sanitation, licenses, permits to conduct business, and all other matters.

Nothing in these conditions shall be construed to prevent the enforcement of the provisions of the regulations of the NPS or any other regulations applicable to park lands. Representatives of the superintendent have authority to enter upon the land for the purpose enforcing conditions of this permit and to enforce laws and regulations applicable to the park.

All park regulations must be adhered to. The digging and/or removal of any historic relic or other object of antiquity is prohibited. Any object of antiquity unearthed or otherwise found must be left in place, protected, and immediately reported to the park's **(CULTURAL RESOURCE MANAGER)** so that it may be properly protected.

There shall be no disturbance of the surface of the land, except as permitted for agricultural purposes, including but not limited to filling, excavating, removing topsoil, sand, gravel, rocks or minerals, building roads, draining wet areas, or changing the topography of the land in any manner, nor shall any vegetation, including but not limited to brush and trees, be removed, except with the prior authorization of the superintendent or as provided for in this permit.

**Sanitation**

The Permittee shall not discharge waste or effluent from the permitted property in a manner that will contaminate streams or other bodies of water or otherwise become a public nuisance.

The dumping of trash or other unsightly materials in the park or the keeping thereon of junked or wrecked vehicles, inoperative farm equipment, or similar items is prohibited. The Permittee shall dispose of brush and other refuse as directed by the superintendent. No sign, billboard, or advertisement shall be displayed or placed in the park, except with permission of the superintendent.

**Permittee Access**

Access to fields is noted on the attached map. The use of any other access road or roads into the permit area must be approved in advance by the natural resource management specialist. Any gates that serve only the permittee's fields must be kept closed and locked at all times, and care must be taken to ensure that unauthorized persons do not enter the park during closed hours. After obtaining

permission from the park, the permittee may place a personal lock, interlocked with the park lock, on park gates which only serve the permittee's fields. The permittee may only work the fields during daylight hours.

**Public Use**

Members of the general public are granted rights of access to these lands. Permittee's use of the land is subject to the right of the NPS to establish trails, roads, and other improvements on or through said premises. Every effort will be made by the NPS to avoid undue interference with use of the land by the Permittee for the purpose intended under this permit.

**Prohibition of Other Uses**

This permit is for haying use only. No special tenant privileges relating to hunting, fishing, camping, or other recreational use apply under the terms of this permit.

No commercial activity such as selling of baled hay may take place on National Park Service property.

**Structures**

Permittee is responsible for any damage to park buildings, fences or other structures as a direct result of the agricultural operation.

No building or other structure of any kind shall be temporarily or permanently constructed, reconstructed, erected, or moved onto the property, including but not limited to mobile homes.

**Fire Prevention**

The Permittee and his employees shall take all reasonable precautions to prevent forest, brush, grass, and structural fires All internal combustion engines shall be equipped with spark-arresters or mufflers to prevent grass fire hazards. All fires (forest, brush, grass, structural) shall be reported immediately to the park superintendent or his representative.

**Reporting**

The park's **(natural resource management specialist)** shall be the superintendent's representative regarding all activities under this permit. He may be reached at XXX-XXX-XXXX. His alternative contact shall be the (**PARK CONTACT)** at XXX-XXX-XXXX.

All accidents shall be reported immediately to _____.

Permittee agrees to complete the Annual Crop Yield and Planting Report and forward it to the park's **(Natural Resource Management Specialist)** by December 1 of each year. The permittee also

agrees to complete the annual Integrated Pest Management Use Request whenever any biocide use is anticipated, and forward it to the park's Natural Resource Management Specialist. Copies of forms for these reports are attached.

**Set-Aside Programs**

No lands covered under this Permit shall be placed in any state, federal, or local government program such as Payment in Kind (PIK), soil bank, or any other set-aside programs without prior written approval of the superintendent. Application by the Permittee for inclusion in such a program shall be justification for immediate revocation of this permit.

**Assistance to NPS**

With the permission of the Permittee and under such terms as are negotiated in advance, the NPS may periodically use the Permittee's service, equipment, stock, or premises to carry out its management or administrative activities. Expenses associated with such use may be deducted from the established rental fee or charged to the NPS and paid by such.

**Termination, Revocation, or Modification**

Permittee agrees to have liability insurance in the amount of $1,000.000. Permittee agrees to have on file with the park copies of the above insurance. The National Park Service shall be named as an "additional insured" on the policy.

This permit, or any part of said permit, may be terminated by the Permittee at any time by giving to the superintendent at least ten (10) days notice in writing provided that, in the case of such termination, no refund by the United States of any rental theretofore paid shall be made. Permittee agrees that any plowed fields will be seeded, limed, and fertilized according to the conservation plan before termination. The Permittee is responsible for leaving a adequate cover crop of grasses and legumes on any fields s/he wishes to terminate. If the Permittee fails to do this the NPS may charge the Permittee the cost of establishing an adequate field cover.

The right is reserved by the Government to adjust the acreage and/or conditions, as specified in this permit, annually. The permittee agrees to vacate within 30 days any portion of the land under this permit whenever given a written notice by the superintendent, when he deems it advisable and in the interest of the Government. Under those conditions, any fees paid or costs for seed, lime and fertilizing applied by the permittee for the calendar year will be prorated and refunded to the permittee.

Upon breach of any provision of this permit or failure upon the Permittee's part to conform to the laws of the United States, or any rules or regulations regarding the park, whether now in force or hereafter enacted or provided, the NPS may revoke the permit without any refund of fees or cost for lime and fertilizing and seeding..

In the event that the permit expires, or is terminated for any reason prior to its expiration date, and if all charges due the Government herein have been paid, the Permittee shall remove all personal belongings within thirty (30) days. If the Permittee fails to remove all such structures and improvements within this period, they shall become the property of the United States, but that will not relieve the Permittee of liability for the cost of their removal and the restoration of the site.

This permit is for a five year period.

**Hold Harmless**

Any property of **(Park name)** damaged or destroyed by the permittee incident to his use and occupancy of the premises and lands shall be promptly repaired or replaced by the permittee to the satisfaction of the superintendent, or in lieu of such repair/replacement the permittee shall, if so required by the superintendent, pay to the United States money in the amount sufficient to compensate for the loss sustained by the United States.

This agreement is made upon the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, injuries, or death to any person or persons or property of any kind whatsoever, whether to the person or property of the (Permittee/Grantee), its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by the (Permittee) in connection herewith, and the (Permittee) hereby covenants and agrees to indemnify, defend, save and hold harmless the United States, its agents, and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.

**Bankruptcy Termination**

All rights of the Permittee hereunder shall terminate upon the filing of: (1) a petition in bankruptcy by or against the Permittee; (2) a petition seeking a reorganization, composition, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act; (3) an assignment for the benefit of creditors; (4) a petition or other proceeding against the Permittee for the appointment of a trustee, receiver or liquidation; (5) the taking by any person of the interest of the Permittee, if any, created hereby or any part thereof upon execution attachment or other process of law or equity.

**Anti-Deficiency Act**

Nothing herein contained shall be construed as binding the Service to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the Service in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

**Non-Discrimination**

During the performance of this Agreement, the Permittee agrees that it will not discriminate against any person because of race, color, religion, sex, or national origin. The Permittee will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, or national origin.

**Benefits Clause**

No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Grant if made with a corporation for its general benefit.

## ANNUAL CROP YIELD AND PLANTING REPORT

PERMITTEE'S NAME

DATE OF REPORT:

FIELD # _____ CROP:

YIELD DURING 20

| First Crop/Date | Second Crop/Date |
|---|---|
| 1] _____ | 1] |
| 2]_____ | 2] |

LAST DATE FERTILIZER APPLICATION:

AMOUNT OF FERTILIZER: _____ #/ACRE:

TYPE OF FERTILIZER/MIXTURE:

LAST DATE OF LIME APPLICATION:

AMOUNT LIME: _____ #/ACRE:

SUBMIT THIS REPORT BY DECEMBER 1st OF YEAR TO:

NATURAL RESOURCE MANAGEMENT SPECIALIST
(**PARK NAME**)
(**PARK ADDRESS**)

_____

PERMITTEE'S SIGNATURE DATE

## INTEGRATED PEST MANAGEMENT USE PROPOSAL

All pesticide or herbicide use must be approved in advance. **PLAN AHEAD**. Submit this document fully completed with a copy of the pesticide specimen label to: Natural Resource Management Specialist, (**PARK NAME AND ADDRESS)**. If you have any questions contact the park Chief Ranger or Natural Resource Management Specialist at (**PHONE NUMBER**). The park will secure any approval needed, then notify you of the approved or alternative approved method.

PERMITTEE'S NAME:

DATE:

FIELD #/NAME:

TARGET PEST:

CROP:

PESTICIDE/HERBICIDE PROPOSED FOR USE:

EPA REG. NO.:

REASON FOR USE:

DATES OF ANTICIPATED USE:

TIME OF DAY:

METHOD OF APPLICATION:

SAFETY PRECAUTIONS:

NAME OF CERTIFIED APPLICATOR WHO WILL APPLY PESTICIDE:

STATE CERTIFIED? [ ]YES [ ]NO; TYPE OF CERTIFICATE APPLICATOR HAS:_____

WHAT OTHER ACTIONS ARE BEING TAKEN BEFORE ANY APPLICATION: e.g. monitoring, determining injury and action level, use of biological, physical, cultural methods, etc.

_____

_____

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PERMITTEE'S SIGNATURE DATE

# APPENDIX 8 – DOMESTIC LIVESTOCK MANAGEMENT

## OBJECTIVE

The Special Use Permit (SUP) is the primary document used to permit livestock operations for rangeland and pasture grazing in the National Parks. The SUP is the preferred instrument to manage livestock grazing in parks because it is a standardized process used by the NPS to establish conditions, receive payment for use of the land, and obtain reimbursement for actual application, administration, and management costs.

In some instances, a lease could be used for livestock operations instead of a SUP. Similar to a SUP, the lease sets the conditions of use and requires fees and reimbursement costs. In addition, however, a lease entails rental at fair market value, public notices of availability in newspapers, advertised sealed bids, and more. This process may be too burdensome compared to issuing a special use permit. This Appendix deals with the special use permit. Information about using a lease is located in Reference Manual 38.

In permitting livestock use, the National Park Service (NPS) will foster "best management practices" that protect vegetation and wildlife and its habitat, safeguard sensitive species, control proliferation of exotic species, conserve soil, protect natural waterways and groundwater, avoid toxic contamination, and preserve cultural sites. No livestock use or activity will be permitted that would impair or derogate the resources or park values. Permitted activities will be monitored throughout the term of the permit, and written evaluations documented. Any violation will be brought to the attention of the permittee, and a resolution agreed upon prior to continuation of activities.

## REGULATIONS

The specific NPS regulation is 36 CFR 2.60 Livestock use and agriculture.

## POLICY

In NPS Management Policies, Section 8.6.8 Domestic and Feral Livestock states that each park that allows livestock use will develop a livestock management plan, including parks where livestock is managed by other agencies. The NPS will allow livestock use only when the use is:

- Specifically authorized by a park's enabling legislation; or
- Required under a reserved right of use arising from the acquisition of a tract of land; or
- Conducted as a necessary and integral part of a recreational activity appropriate to a park; or
- Required in order maintain a historic scene.

No livestock use or activity, regardless of how authorized, will be allowed that would impair or

derogate the resources, values or purposes for which a park was established. In particular, a proposed livestock use that would deplete or degrade non-renewable resources, or whose effects could not be mitigated, will not be allowed.

Livestock activities that are allowed will be conducted only pursuant to the terms and conditions of a special use permit, lease, concession contract or commercial use authorization. In addition to any other penalty provisions, violation of the terms and conditions of the permit may result in revocation of the livestock use privilege.

**FEES**

A park issuing a SUP for rangeland or pasture grazing will recover all costs (application, administrative, and management) associated with the permit as authorized by 16 USC sec. 3a. In addition, a park will charge a "grazing fee" for the use and occupancy of the lands and resources involved. See Chapter 10 MANAGEMENT OF PERMIT FEES for additional guidance to recover costs and charge fees.

A park must document how costs are established for reimbursement of actual expenses for livestock use application, administration, and management. Collection and disposition of fees must be well documented. The superintendent has the authority to exempt a use from fees, but such an exemption must conform with one of those listed in Chapter 10 MANAGEMENT OF PERMIT FEES, and be adequately documented. In addition, the permittee and others who enter the park to manage livestock will not be charged an entrance fee, recreation use fee or special recreation permit fee.

Grazing fees are calculated on a case by case basis by competitive market price or determined with existing formulas, such as the US Forest Service (USFS) formula in 36 CFR 222.51 or the Bureau of Land Management (BLM) formula in 43 CFR 4130.7-1. Some parks are required by authorizing legislation to follow certain formulas or agencies. Competitive market price is calculated by competitive bidding or reference to prevailing prices in competitive markets for similar property resources or services. In the western United States, each state annually (or biennially) determines the animal unit month (AUM) fee for rangeland grazing using formulas that represent conditions and cattle prices by state. These are more specific to the conditions in a state than either USFS or BLM AUM fees and are better evaluations of the fair market price. Parks should examine state fees when determining AUM costs instead of automatically apply formulas, such as the USFS or BLM fee rates.

Following is an example of statements from a NPS livestock management plan for rangeland grazing that describes land use and special use fees:

> "Grazing fees will be charged to the permittee following the USFS formula found in 36 CFR 222.51. Grazing fees will not be assessed during non-use years. Refunds or credits of this

land use fee (charge for AUM) will be allowed when actual grazing use is less than the allotted use.

An application fee may be assessed annually when the permittee applies for the livestock use permit. This amount will be due and payable when the request to issue the permit is received. Application costs will not be assessed during periods of non-use.

An administrative fee will be charged for the work done by the NPS from the time the application is received and the permit approved until the livestock are put in the allotment. It covers the actual expense of park staff time to do the administrative functions required to prepare for the activity. This can include, but is not limited to, checking readiness of range structures as well as planning, compliance, consultation, monitoring, and research. This cost will be waived during periods of non-use.

The management fee will be charges for the work done by NPS staff to manage the ongoing activity. This begins when livestock are put in the allotment and continues until they are removed. This can include, but is not limited to, checking range structures and livestock movement as well as reading and analyzing trend monitoring plots as described in the livestock management plan and environmental assessment. It is due and payable as indicated in the permit. This cost will be waived during periods of non-use.

## PROCEDURES

More detailed procedures are provided in Reference Manual 77-3 Domestic and Feral Livestock.

Permit Process It is recommended that a park issue a SUP for livestock use on a competitive basis unless there is a compelling reason to do otherwise. When a permit becomes available and the use must continue or is desirable, an invitation is extended to the public to apply. This may be announced through the news media, local farm and ranch bureaus, etc. and talking with commercial businesses, concessioners, ranchers, farmers, and others with known interest. If more than one application is received for the same use, selection of the permittee should be based upon the ability to perform the work and interest in and knowledge of the resource and livestock.

Past performance of a permittee must be weighed in evaluating permit applications and renewals. The applicant who has demonstrated, or who can demonstrate, the best ability to perform the work and who has the highest interest in the resources must receive preference in the selection process. The permittee must understand and agree with the objectives and procedures for management of the area. Selection of a permittee must not be based on who is able to pay the highest fee since the fee is never more important than a quality permit.

Insurance Since livestock operations are inherently hazardous, it is highly recommended that permittees carry liability insurance (see Chapter 6 PERMIT PROVISIONS). There are occasions when the cost of such insurance might be prohibitive, and the superintendent may use discretion and adjust insurance requirements. At a minimum, the permit must include a hold harmless clause.

Permit Period A SUP may be issued for up to 5 years. The livestock management plan would require an annual review of operations and impacts to determine whether to renew the permit.

Fees Parks should charge fees comparable with prevailing prices in competitive markets for similar property resources or services. For some parks this may not apply because another agency is administering the grazing or a legislated statement directs charging the same fee as USFS or BLM. However, most parks with rangeland grazing automatically charge fees based on formulas for USFS or BLM when there is no legislative requirement.

A fee comparability study would be made prior to issuing or renewing a permit. Various sources are available including the state land cost analysis or equivalent done by western state governments, advertisements in local papers, private owners, and other agencies, ranchers, and extension agent, to obtain information on fair market value for agricultural lands.

The fee charged should be at least equal to that normally charged for land of similar quality and with similar facilities in the local area (usually based on a comparability survey). It should take into account the special requirements of the permit, as well as any services and benefits provided by the NPS. The fee may be adjusted to compensate to encourage participation in experimental programs or any of the park management objectives outlined above. Fees should be calculated on a case by case basis.

Site-Specific Management Plan Each park with livestock operations will prepare a livestock management plan designed to allow the use, while sustaining and protecting park resources and values. The plan will include an evaluation of impacts, to comply with the National Environmental Policy Act and National Historic Preservation Act. Contents include authority for the use, management and resources objectives, legislative requirements, grazing or livestock history, current condition of range/pasture, monitoring programs, and other relevant information. Restrictions will be placed on the amount and type of use to protect resources and to minimize conflicts with recreational users. Special consideration will be given to protecting wetlands and riparian areas, sensitive species and their habitats, water quality, cultural resources, and other interests. Natural and cultural resources will be given first priority when determining livestock management priorities. A long-term monitoring program will be used to detect change and adjust management to protect resources.

## PART I ANNUAL OPERATING PLAN

Your grazing instructions for October 15, 2000 to March 15, 2001 are shown below. Follow them closely as they supplement management direction provided in your allotment management plan.

Number and Season of Use Permitted:

| Allotment | Livestock Number (AUM) | Season of Use |
|---|---|---|
| Montezuma | 126 AUMs | Winter: October 15-March 15 |

Contact the National Memorial headquarters if you anticipate any changes in livestock numbers or dates as soon as you become aware of them.

## PART II GENERAL MANAGEMENT PRACTICES

1. General Instructions
   Follow the instructions shown in the Allotment Management Plan and all parts of your grazing permit.

2. Entry and Departure
   Contact the superintendent five days prior to placing livestock on the memorial and five days prior to departure to allow NPS staff to schedule time for counting livestock. If NPS is unable to count them, the permittee will count them and record the numbers and on/off dates on the actual use forms provided.

3. Schedules
   Grazing and billing schedules will begin on October 1 in one year and end on September 30 of the following calendar year, hereafter referred to as fiscal year.

## PART III PERMIT PROVISIONS

The following provisions apply to lands administered for grazing in the National Memorial.

1. Fees Assessed
   (a) Grazing Fee
   A grazing fee will be charged to the permittee following the USFS formula found in 36 CFR 222.51.
   (b) Application Fee
   An application fee of $50.00 will be charged to reimburse the cost to the government for processing the application.

(c) Administrative Fee
Additional expenses incurred by the NPS (administration costs) will be assessed based on actual costs. This includes, but not limited to, time billed for checking readiness for range structures.

(d) Management Fee
An additional fee, estimated at $1000.00, will be assessed annually to reimburse costs to the NPS for allotment vegetation monitoring.

2. Bill for Collection
Each year prior to the beginning of the grazing season, the superintendent of Coronado National Memorial will send the permittee a Bill for Collection specifying the current year, kind, number, and class of animals allowed to graze, estimated period of use, grazing allotment, and grazing fees for the next grazing season. Additional fees for monitoring and administration will be included as incurred in the previous fiscal year. This bill, when paid, becomes part of this permit. The Bill for Collection will not be issued during years of non-use.

3. Fee Payment
The permittee will deposit payment for grazing fees with the designated National Park Service collection officer not later than the date specified in the Bill for Collection. The NPS will not allow livestock grazing until the permit is validated by fee payment specified in the Bill for Collection.

4. Permit Validation
The issuance of a Bill for Collection, payment of fees, and actual turning out of livestock will validate this permit for the number, kind, and class of livestock, grazing allotment, and period of use for the particular year.

5. Permit Tenure
This permit is effective for one year following the issuance of the Bill for Collection unless waived, cancelled or otherwise terminated as provided herein. The grazing operation will be reviewed annually.

6. Ownership Requirement
(a) Only livestock owned by the permittee are authorized to graze under this permit. To exercise use of the permit, the permittee will furnish all evidence of ownership requested by the National Park Service, including a copy of the certified brand registry.
(b) The permittee is required to produce evidence of base property ownership (minimum of 40 acres, unless otherwise agreed upon by the superintendent) if requested to do so by the superintendent.

7. Range and Livestock Management

(a) The allotment management plan is a part of this permit. The permittee will carry out its provisions and/or other instructions issued by the National Park Service for the area under permit, and will require employees, agents, and contractors and subcontractors to do likewise.

(b) The number, kind, and class of livestock and period of use specified in the permit or Bill for Collection may be modified when determined necessary by the superintendent for resource protection. Except in extreme emergencies where resource conditions are being seriously affected by livestock use or other factors such as fire, drought or insects, a four-month notice of a scheduled reduction will be given. This does not apply to annual adjustment in grazing as provided for in Part III, Section 7 (c).

(c) When NPS judges the forage is not ready to be grazed at the beginning of the designated grazing season, the permittee, upon direction from NPS, will defer placing livestock on the grazing allotment to avoid resource damage. The permittee will remove livestock before the expiration of the designated grazing season upon direction from NPS when further grazing would damage the resources or threaten other park values.

(d) The NPS will allow only the number and kind of livestock permitted in Part I during the period specified in the Bill for Collection including any modifications provided for in Part III, Section 7 (c). Livestock will not intrude on any non-allotted areas of NPS administered lands.

(e) The superintendent may at any time place or fasten or require the permittee to place or fasten upon livestock appropriate marks or tags that will identify them as livestock permitted to graze on lands administered by the National Park Service. When directed by the superintendent, the permittee will at any time during the permitted period of use, including entry and removal dates, gather livestock for an accurate count.

(f) Only livestock marked as shown in the application for this permit is based, and as may be required under Section 7 (e), will be allowed to graze under this permit unless the permittee has advance written approval from the superintendent to do otherwise.

(g) The permittee will pay costs of, perform, or otherwise provide for, the proportionate share of cooperative structures and management practices on the permitted area when determined by the superintendent that such structures and practices are essential for proper protection and management of the resources.

(h) This permit is used and accepted with the provision that the permittee will build and/or maintain all range structures which are assigned to him/her for maintenance, to standards of repair, orderliness, and safety acceptable to the National Park Service. The Government may maintain or otherwise improve said structures when in its opinion such action will be to its advantage.

(i) When horses are used by permittee to manage livestock, due notice will be given to the superintendent or designated representative. Horses will not be permitted to graze at

large within any portion of the National Memorial.

(j) The National Park Service shall determine the location of temporary holding pens, watering sources, and distribution and rotation of salt in the memorial, based upon park policies and best management practices. Contact the superintendent prior to the grazing season for details on placement of salt blocks.

(k) All pesticide use is subject to approval by the Director of the National Park Service. Use of any pesticide must be requested in writing by the permittee and approved in writing by the superintendent.

(l) Supplemental feeding (hay, cake, protein blocks, etc.) will not be allowed within the memorial.

(m) No predator control will take place within Coronado National Memorial.

(n) The United States reserves the right to perfect title to all rights for water which may be developed or used in connection with this permit. Should such water service be unavailable or inadequate, the permittee may, with prior approval of the superintendent, provide the same at his/her own expense, subject to requirements that may be prescribed by the NPS. It is understood that this permit will continue the privilege of using existing livestock watering facilities, and that any privately owned water system or structural appurtenance located on the land covered by this permit will become the property of the United States upon termination of the permit, unless otherwise agreed upon by the superintendent.

(o) The permittee will cooperate in any action necessary to remove trespass livestock from park lands not covered by this permit. Owners will be subject to prosecution if livestock are not removed in five days as specified in 36 CFR 2.61.

8. Non-use

(a) At least 90 percent of the livestock permitted must be grazed. Failure to place livestock on the allotted range may result in cancellation of this grazing permit in whole or in part.

(b) Fees will only be charged for permit application during periods of non-use.

9. Protection

The permittee, his/her agents and employees, when acting within the scope of employment, and contractors and subcontractors will protect the land and property of the United States and other land under jurisdiction of the National Park Service covered by and used in conjunction with this permit. Protection will include taking all reasonable precautions to prevent and to report promptly all fires on or endangering such land property. The permittee will pay the United States for any damage to its land or property including range developments resulting from his/her negligence or from violation of the provisions and requirements of this permit.

10. General

(a) The superintendent may at any time require the permittee to give good and sufficient bond to insure payment for all damage, or costs to prevent or mitigate damages sustained by the United States through the permittee's failure to comply with the provisions and requirements of this permit or the regulations of the Secretary on which it is based.
(b) This permit will be cancelled, in whole or in part, whenever the area described in this permit is withdrawn from grazing use or devoted to a public purpose that precludes grazing.
(c) The permittee will immediately notify the superintendent of any change in his/her base property, ownership of livestock, or other qualifications to hold this grazing permit.
(d) The permanent structures constructed, or existing for use, in conjunction with this permit are the property of the United States Government, unless specifically designated otherwise, or covered by a cooperative agreement. They will not be removed, nor compensated for upon cancellation of this permit except when cancelled in whole or in part to devote the land to another public purpose including disposal.
(e) The permittee cannot lease or transfer any part of the allotment to others to make up any shortage in the permit.

11. The permit may not be assigned or otherwise transferred without the prior written approval of the memorial superintendent.

## PART IV GRAZING PERMIT MAINTENANCE RESPONSIBILITIES

The permittee is responsible for the maintenance of following range structures, which are essential for proper management of the grazing allotment: fences, water troughs, pipes, and windmill

## PART V MAINTENANCE STANDARDS FOR RANGE STRUCTURES

1. General Instructions
(a) Refer to the allotment management plan for instructions on structures.
(b) At the end of the grazing season, the permittee will report to the superintendent on any changes made in range structures, including labor time and costs, and cost of materials.
(c) Structures must be built and properly maintained prior to livestock entering the memorial.
(d) Standards for range structures may change as better products or methods are developed.

2. Water Developments - Troughs, Pipelines, and Ponds Standards
(a) All spring source facilities should be fenced and fences maintained to prevent livestock from getting into the source or the head box.
(b) Head box lids or covers shall be in place to prevent dirt, animals, and refuse from getting

into the head box.

(c) All outlet pipes and valves from head boxes will be functional. Leaking will be repaired in a timely fashion.

(d) Water troughs will be kept at heights that make them usable to livestock. Troughs that become elevated from trampling livestock will be periodically backfilled to maintain a useful height.

(e) Troughs that become uneven due to settling will be reset and leveled.

(f) Bottom of troughs will be kept clear of the ground with at least two to four inches of clearance under the bottom of the trough to prevent rusting or decomposition, unless mounted on concrete.

(g) Water will not be allowed to overflow the sides of the trough. Overflow pipes must be kept clear. Overflow water will be piped away from the troughs at least fifty feet. The end of the overflow pipe must be protected from trampling by livestock. Water from the overflow pipe must be directed away from the trough area.

(h) Inlet and outlet pipe shall be protected by anchoring to the trough with single post next to the vertical pipe and a brace or pole supporting the horizontal pipe. Inlet and outlet pipeline will be buried as much as possible for their protection.

(i) All troughs should be equipped with a floating board or pole secured near one end of the top rim of the trough and extend out into the trough far enough to provide a platform from which birds and rodents can escape or drink from the trough. It can also serve to help prevent the tank from bursting from ice pressure.

(h) Troughs, storage tanks, and pipelines will be drained and cleaned periodically to prevent moss and debris buildup and damage from freezing.

(i) Poles, posts, and trough-framing materials used in the construction of the water development will be maintained, repaired or replaced as needed.

(j) All above-ground pipeline supported structures will be maintained to keep the pipes at gradient and prevent sagging.

3. Range Fences - Construction Standards

(a) Materials

(1) Steel Posts: Steel posts with T-plates will be 6 feet in length, be 1 3/8 inches x 1 3/8 inches x 1/8 inches, and have clip-type wire fasteners. They will be for line posts and gates.

(2) Steel Pipes: Black steel pipes will be 6 1/2 feet in length, 2 inches diameter, and 1/4 inch thick. They will be used as the corner posts in corner assemblies.

(3) Angle Iron: Angle iron will be 6 1/2 feet in length with other measurements 2 1/2 inches x 2 1/2 inches x 1/4 inch. Angle iron will be used to construct H-braces for end or in-line braces. They will be used with steel pipe to make corner assemblies. Bolts, nuts, and washers will be provided for the assemblies.

(4) Wire: The following wires will be used for fencing:

Barbed Wire: This will be "American Glidden" 2-twisted strand, 12 1/2 gauge galvanized wire or "Sheffield 100" 2-strand, 13 1/2 gauge high-tensile strength galvanized wire. Barbs will be 2-pointed, 14 gauge wire spaced at 4-inch intervals.

Smooth Wire: This will be 2-strand and 12 1/2 gauge galvanized wire.

Stays: Stay wire will be 42 inches in length and 14 gauge galvanized wire.

Tie Wire: Use the smooth wire for corners, gates, and braces. Same as line wire.

Steel Post Clips: Spring clip fasteners will be 11 gauge galvanized wire.

(b) Preservation of Natural Features

Exercise special care to maintain natural surroundings as undamaged as possible. Restore damaged natural features not directly altered by fence construction as nearly as possible to the original condition.

(c) Post holes and setting posts

(1) Line Posts: Steel posts must be driven a minimum of 16 inches in ordinary ground and not more than 20 inches. If rock formations prevent driving, remove the T-plate and excavate or drill holes a minimum of 18 inches deep and slightly larger than the diameter of the post. Place the post in the hole and anchor it solidly in position with non-shrinking grout or rapid-setting cement. If the post has a snug fit in the drilled hole, i. e. cannot be pulled out or wiggled loose, then grout or cement is not necessary, but the holes will be back filled with dirt. Driven posts that are bent are not acceptable.

(2) Steel posts will be spaced at 16-foot intervals. The spacing can be shortened a few feet for individual posts to avoid rocks, cliffs, and stumps. Steel posts will not be used for corners or braces but will be used for fence panels and as part of the gate construction.

(3) Braces and Corners: Angle iron will be used to make H-braces for end or line braces. Corner assemblies will use pipe for the center post and angle iron for the remaining brace pieces.

(4) Holes will be dug in dirt or drilled in rock a minimum of two feet deep and slightly larger than the diameter of the post. Place the angle iron and pipe posts in the holes and set them solidly in position with non-shrinking grout or rapid-setting cement.

(5) If the angle for the corner assembly exceeds 90 degrees, but is less than 175 degrees, the center post will be anchored by at least two guy wires wrapped around large stones (70 pounds or more), bolted and tied into rock, or tied onto stakes. The anchors will be placed far enough from the post so that the guy wires make approximate 45 degree angles with the post at top wire height. The guy wire will consist of 4-strand, galvanized smooth wire. The guys will not be tightened until the anchors are firm. The stake is a 1 to 1 1/2 foot steel stake driven into the ground at least 8 inches. A guy guard consisting of a 4-inch stick

must be permanently attached to the full exposed length of each guy wire.

(d) Grout or cement

(1) Grout or cement will be used to set posts and, when necessary, braces. Products used will be non-shrinking grout (Dayton Superior Sure-Grip Grout or equal) or rapid setting cement (Rockite, Hardrock, Burke Stone, or equal).

(e) Application of barbed and smooth fence wire

(1) All wire will be tightly and uniformly stretched with due consideration for expansion and contraction that will result from variations in temperatures. It will be securely attached to steel posts, angle iron and pipe posts, and brace bars with standard wire clips or smooth wire.

(2) All line wire will be cut and dead ended on corners, gates, and braces with the end being wrapped twice around the post and twisted back on the stretch wire a minimum of four times.

(3) Fence height and the number and spacing of wire strands will be as follows.

Top strand (smooth): 40 inches from the ground
Second strand (barbed): 12 inches below top strand
Third strand (barbed): 6 inches below second strand
Bottom strand (smooth): 6 inches below fourth strand and 16 inches above the ground
Total number of strands: 4

(f) Stays

Three stays will be used in each 16-foot panel and evenly spaced between posts. Panels less than 12 feet in length can have two stays evenly spaced. Stays will be twisted and locked onto the top wire.

(g) Depressions, ravines, and water gaps

Where the fence crosses small depressions and washes, the wire will be tied down and anchored with a heavy rock (70 pounds or more) in such a manner that the strain will not pull on the posts. For deeper water gaps, additional wires will be added to form an effective barrier whenever the distance from the ground at the deepest point of the depression to the normal bottom wire exceeds two feet.

(h) Gates

Gates will be at least six feet wide and flanked by an H-brace on both sides. It will be made of smooth wire. Wire will be attached to two steel line posts with the T-plates removed. The wire will have the same spacing described for the fence line. Smooth wire will be used to attach the gate to the brace posts and for the loop latches. Two stays will be evenly placed and will be locked on the top wire.

4. Range fences - Maintenance Standards

(a) All broken wires will be spliced and repaired in such a manner to maintain wire tension. Wire splices will be made with 12 gauge size tie wire or type of wire used in initial construction.

(b) Broken or rotten posts, broken braces, and missing staples will be replaced where and when needed to maintain the fence.
(c) Wires will be re-stretched where needed.
(d) Broken or missing stays will be replaced where needed.
(e) Staples should not be driven so deep into the post that they scar or create a weak spot in the wire.
(f) All gates should be closed before and after livestock enter the grazing units.
(g) Wire gate tension will be sufficient to prevent the gates from sagging and still be easily opened and closed. Gate loops should be made from smooth wire, not barbed wire.
(h) Trees that fall on fences will be cut and removed when and where needed; wire, if broken, will be spliced and re-stretched; poles, if broken, will be replaced.

_____
Permittee and Allotment Date

_____
Superintendent, Coronado National Memorial Date

# APPENDIX 9

## VISITOR USES AND ACTIVITIES REGULATED BY 36 CFR PARTS 1-7

The following is a list of activities requiring permits, with their appropriate CFR sections referenced. The procedures to be used for the issuance of these permits, as well as permits required in special regulations (Part 7), are found at 36 CFR 1.6, unless otherwise noted below. Additional coverage for Alaska is found at 36 CFR Part 13 and 43 CFR Part 36.

Visitor Use Permits

- Public use limits to allow the setting of maximum or minimum numbers for such activities as campgrounds, backcountry use, river running, mountain climbing - 36 CFR 1.5
- Firearms (carrying/possessing) - 36 CFR 2.4
- Collection of specimens - 36 CFR 2.5 (contains its own permitting criteria) (See Appendix 6)
- Camping - 36 CFR 2.10
- Operation of power saw or power motor - 36 CFR 2.12
- Air delivery - 36 CFR 2.17
- Explosives, fireworks - 36 CFR 2.38
- Special events - 36 CFR 2.50 (contains its own permitting criteria) (see Appendix 10)
- Public assemblies - 36 CFR§2.51 (contains its own permitting criteria) (See Appendix 3 and 10)
- Sale or distribution of printed matter - 36 CFR 2.52 (contains its own permitting criteria)
- Grazing; agricultural use - 36 CFR 2.60 (See Appendix 9 and 8)
- Residing on park lands - 36 CFR 2.61
- Scattering of human ashes - 36 CFR 2.62
- Boating - 36 CFR 3.3
- Load, weight and size limits - 36 CFR 4.11(b) and (c)

Commercial And Private Operation Permits

- Advertisement - 36 CFR 5.1
- Sale of Alcoholic beverages - 36 CFR 5.2
- Business operations - 36 CFR 5.3
- Commercial passenger carrying motor vehicles - 36 CFR 5.4
- Commercial photography - 36 CFR 5.5, and Appendix 15
- Commercial vehicles - 36 CFR 5.6
- Construction - 36 CFR 5.7
- Eating, drinking, and lodging - 36 CFR 5.10

There are also numerous permitting requirements found in special regulations in 36 CFR Part 7. Permit requirements for Alaskan park areas are found in 36 CFR Part 13.

Other Activities Covered by Regulation

- Aircraft use - 36 CFR 2.17
- Off-road vehicle use - 36 CFR 4.10 and compliance with Executive Orders 11644 and 11989
- Snowmobiles - 36 CFR 2.18
- Use or possession of wood - 36 CFR 2.1

References

36 CFR Parts 1-7, and Part 13 (Alaska)
Executive Order 11644, Off-road Vehicles on Public Lands
Executive Order 11989, Off-road Vehicles on Public Lands

# APPENDIX 10 - SPECIAL EVENTS

## GENERAL

Special events are activities, such as sporting events, pageants, regattas, public spectator attractions, entertainment, ceremonies, large group camps or rendezvous, that fall under the category of privileges (See Appendix 1). Special events differ from public assemblies and public meetings in that the latter activities fall under the mantle of Rights protected by the First Amendment to the United States Constitution (See Appendix 3). The superintendent is required to evaluate thoroughly in the context of the National Environmental Policy Act each request to conduct a special event, even though many may eventually be classified as categorical exclusions. Compliance with Section 106 of the National Historic Preservation Act may also be required (See Chapter 6). A special event does **not** include any activity managed under the Concessions Management Improvement Act, or any recreation use covered by section 4 of the LWCFA, any recreation use covered by the Recreational Fee Demonstration Program, any leasing activity pursuant to the National Historic Preservation Act, or Section 802 of the National Parks Omnibus Management Act of 1998.

Note that in the park units of the National Capital Region, special events are further defined in *35 CFR 7.96(g)(1)(ii)*.

## POLICY

The National Park Service (NPS) may permit a special event if the proposed activity will not:

- Cause injury or damage to park resources; or
- Be contrary to the purposes for which the park was established; or
- Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic or commemorative locations within the park; or
- Unreasonably interfere with the interpretive visitor service or other program activities, or with the administrative activities of the NPS; or
- Substantially impair the operation of public facilities or services of NPS concessionaires or contractors; or
- Present a clear and present danger to public health and safety; or
- Result in significant conflict with other existing uses.

The National Park Service will not permit the public staging of special events that are conducted primarily for the material or financial benefit of the organizers or participants, or which involve commercialization or in-park advertising or publicity. However, park buildings or specially designated locations that are suitable and appropriate may, at the discretion if the superintendent, be made available for private, "by-invitation-only" events. Admission fees for, or any other monies associated with the event may not be collected on Park premises.

The NPS will recover costs incurred in administering permits and monitoring the activities it authorizes. It will also establish and collect permit fees authorized by applicable legislation, regulations, and policies.

Permittees who enter a park for recreational purposes are subject to the same entrance fees, recreation use fees, and recreation permit fees as the general public. There are, however certain special park uses that are clearly not recreational in nature and exempt from entrance fees. Examples include but are not limited to: all First Amendment activities; agricultural; grazing; commercial filming; NPS authorized research; Federal, state and local government business; and outings conducted by schools and other bonafide educational institutions for educational purposes. For further policy guidance, see Chapter 5, and Director's Order #53.

**SPECIFIC REQUIREMENTS**

The superintendent is required to follow the specific tests spelled out in *36 CFR 2.50*, or the special regulations for the designated park units in the National Capital Region in *36 CFR 7.96(g)(4)(vi)*. These regulations authorize the conducting of special events provided:

- there is a meaningful association between the park area and the event;
- the observance contributes to visitor understanding of the significance of the park, **and**
- a permit has been issued by the superintendent.

Generally speaking, these criteria should be interpreted as being inclusive rather than exclusive, since most visits to national parks will entail some meaningful association and impart some understanding of the significance of the park.. However, the NPS intends that special events will not unreasonably interfere with the use of the park by the general public for activities involving enjoyment of park resources or values.

*36 CFR 2.50* includes procedural guidelines for permit applications, time limits for submission of applications and issuance of permits, and standards to be applied in denying permits. If, for example, a special event will cause injury or damage to park resources, provide a clear and present danger to public health and safety, result in significant conflict with other existing uses, unreasonably impair the area's atmosphere of peace and tranquillity, unreasonably interfere with Service program activities, or substantially impair the operation of public use facilities or services of

National Park Service concessionaires or contractors, then the permit must be denied. The Service believes these to be reasonable criteria to apply to any request for a special use permit for a special event to ensure public safety and protection of park resources.

## GROUP SPECIAL EVENTS

A special event, and in particular a group special event, falls within the definition of a special park use. The NPS ability to recovery and retain all costs for special park uses is currently contained in 16 U.S.C. 3a (See Chapter 10). This authority basically says that if we spend a dollar to provide necessary services associated with the special park use, we're allowed to recover (and retain) a dollar. The NPS will calculate the actual costs of providing necessary services for each event and recover those costs on a case by case basis. There are, however, instances, especially with group events, where the most efficient method of calculating the costs is to establish a schedule. This is true when the same event(s) keep recurring, again and again, and generating similar if not identical costs. It is actually more cost effective and efficient not to have to continuously recalculate the same costs over and over again. Examples of these types of recurring group special uses include but are not limited to races, 'thons, and fishing tournaments. In situations like this, where the park experiences continually repetitive events of such magnitude that management is needed and costs experienced, superintendents are given discretion to establish and charge from a schedule of costs, under these conditions:

- the park **documents** the costs from similar events over a 12 months period or more and, using that, calculates a schedule of those costs;
- the park issues public notices in newspapers and other publications of the area, including the Federal Register, requesting public comments on the proposed schedule of cost recovery for the group events, even holding local public meetings if that is appropriate. The park will maintain in the park files and make available to the public upon request all documentation and calculations of how they arrived at the cost recovery fee schedule;
- the park analyzes the comments when they come in, ensuring that the schedule is the more appropriate method of accomplishing cost recovery calculation rather than on a case by case basis, and the amounts are reasonable for each schedule part;
- if the schedule is adopted, the park places it in the superintendent's compendium or other such park location as appropriate;
- the park will update the schedule on an annual basis and provide public notice of the update.

## FORM 10-114

The Special Use Permit (Form 10-114) will be used as the permitting instrument for all special events. The permit will be regarded as a cover sheet enclosing a list of permit conditions as needed. These conditions will be crafted for each event in such a way as to allow management to protect the resources and the general health and safety of the visiting public. Exhibit 2 shows a partial listing of items to consider for special events, all or some of which might be incorporated into the permit as conditions. See Appendix 12 for a further discussion of the SUP Form and Application.

## POLITICAL EVENTS

Political events may be First Amendment activities or special events. A First Amendment activity is managed and regulated under *36 CFR 2.51*; a special event is managed and regulated under *36 CFR 2.50*. Typical examples of political (First Amendment) events managed under *36 CFR 2.51* include public demonstrations, assemblies, or other forms of public expression of opinions and views. Examples of political events managed under *36 CFR 2.50* are political fund raisers and other invitation-only political events not normally open to the general public. In addition to all the usual considerations involved in allowing special events in the parks, the decision to allow the event must take into consideration whether or not the activity would be permitted if requested by any other group.

## FIREWORKS

Special events that comprise or include fireworks displays must comply with NPS requirements (See Exhibit 1 and *36 CFR 2.38*). These requirements should be considered when writing terms and conditions for the special use permit. Fireworks displays are prohibited in natural areas. In other parks, such displays may be permitted under permits approved and signed by the park superintendent, and following consultation with the Regional Safety Officer.

## SALE OF FOOD OR MERCHANDISE

A permittee may not collect admission, parking, or any other monies, associated with a special event on park property. In general, the sale of food or merchandise in the parks without a permit is prohibited by *36 CFR 5.3*. Most sales operations within parks are managed under concession contracts or agreements with cooperating associations. The sale of merchandise by a concessionaire or cooperating association is restricted to indoor facilities specifically designated for its use and for that purpose.

The NPS restricts significantly the sale of items in connection with a special event. The sale of food is allowed only when the sale does not conflict with the activities of an authorized NPS concession, when managed under a permit, and when conducted in compliance with the provisions of the U.S. Public Health Service D.O. 83. The sale of printed material in connection with a First Amendment activity is allowed, as provided in 36 CFR 2.52, **Special Directive** 95-11 or in 36 CFR 7.96(k). The sale of any other merchandise in connection with a special event (including a First Amendment activity), including but not limited to T-shirts, clothing and arts and crafts, is prohibited. These restrictions do not apply to the sale of products produced in the conduct of living exhibits, interpretive demonstrations, or park programs as authorized by 16 U.S.C. 1a-2(g).

The possibility that the event is co-sponsored by the park or is an athletic event does not alter these prohibitions.

## HELIUM BALLOON

Hundreds of thousands of helium-filled latex and mylar balloons are released annually into the atmosphere during promotional and other events. These balloons inevitably fall back to earth, killing or injuring wildlife and adding to both terrestrial and marine litter.

Balloon trash is probably a small contributor to the killing of marine wildlife and a small part of the overall plastic waste problem. However, it is an easily controllable one and its control is symbolic of the NPS' commitment to environmental quality and conservation.

Therefore, the NPS will not allow the sale or use of helium balloons within park units unless they can be controlled or recovered. No release of helium balloons into the atmosphere will be authorized except for research or planning purposes. Special event permits will prohibit the outdoor release of helium balloons, and vendors will not be permitted to sell or use helium balloons except when they can and will be controlled or recovered.

Acceptable uses of helium balloons which may be permitted outdoors include tethering or other controlled arrangements. Releasing balloons indoors where they can be retrieved is also permissible.

## PROCEDURES

Before issuing a permit, the superintendent will require, if appropriate:

- The recovery of all costs incurred by the park in reviewing, planning for and managing the event. (See Chapter 10).

- Bonding - to assure restoration, rehabilitation and cleanup of the area used and recovery of all other costs resulting from the special event.(See Chapter 8).

- Sufficient liability insurance in which the United States is named as additionally insured. (See Chapter 8).

- Such conditions as are reasonably consistent with protection and use of the park, and specific (reasonable) limitations on equipment used and time and area in which the event is allowed.

- Notification that violation of the terms and conditions of a permit issued is prohibited and may result in suspension or revocation of the permit.

The questions in Chapter 7 will also be helpful to superintendents in reviewing requests for special events. Refer to Appendix 12 for specific aid in filling out the 10-114.

References

*36 CFR 2.38*
*36 CFR 2.50*
*36 CFR 2.51*
36 CFR 2.52
36 CFR 2.53
36 CFR 7.96
Special Directive 95-11
NPS Management Policies
NPS-12, National Environmental Policy Act Guideline
NPS-28, Cultural Resource Management Guideline
NPS-22, Recreation Fee Guideline

# FIREWORKS DISPLAYS

## GENERAL

Special events that comprise or include fireworks displays shall comply with the requirements below and in *36 CFR 2.38*. In addition, permittees shall also be required to comply with the requirements in the National Fire Protection Association (NFPA) handbook, Code for the Outdoor Display of Fireworks (NFPA 1123). Compliance with other Federal, State and local requirements is mandatory, when applicable. Where conflicts occur among such codes or standards, the more stringent requirements will apply. In all instances, the permitting of fireworks displays is at the discretion and will be under the management of the superintendent.

## REQUIREMENTS

The following requirements, as appropriate, should be included as conditions in any permit dealing with fireworks displays. Failure to follow any of these conditions shall be cause for immediate suspension or termination of the permit.

Financial Responsibility: Before any permit for a fireworks display is approved, the person, firm or corporation providing the service must furnish proof of liability insurance sufficient to satisfy claims for damage to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof.

Evidence that employees of said person, firm or corporation are properly protected by workers' compensation must also be furnished. In addition, a performance bond should be required in an amount adequate to cover cleanup costs.

Transportation of Fireworks: The transportation of fireworks must be in compliance with the regulations of the U.S. Department of Transportation, 49 CFR Parts 171-180 and 390-399, and all motor vehicle laws of the State in which the display is to be conducted.

Storage: When the fireworks have been delivered to the display site, they must not be left unattended or allowed to become wet. Until shells are loaded into mortars and ground displays are positioned, the fireworks must be stored in covered containers such as ready boxes or corrugated boxes meeting U.S. Department of Transportation, 49 CFR Parts 171-180 requirements for transportation of fireworks.

Notification of Local Fire Departments: At least 30 days in advance of the display, the authority having jurisdiction (local fire department, park safety officer, park structural fire coordinator and/or park fire management officer) must be notified of the intent to have a fireworks display.

Notification of Aircraft: At least 30 days in advance of the display, the local office of the Federal Aviation Administration (FAA) should be notified of the intent to have a display. The notification will include the scheduled date, time and location of the display. The FAA will determine if airspace near the display will be restricted.

Conduct of the Display

- No display will be conducted where the discharge, failure to fire, faulty firing or fallout of any fireworks or other objects would endanger persons, buildings, structures, forests or brush. Separation distances for the display site must meet NFPA 1123 standards.

- Spectators at a fireworks display must be restricted behind lines or barriers (e.g. snow fencing) by the distances specified in NFPA 1123. Natural barriers may be used instead of artificial lines, if appropriate. Monitors whose sole duty shall be the enforcement of crowd control must be located around the display site.

- No display will begin if the wind velocity is more than 20 miles per hour, or if unusually wet weather prevails, such that in the opinion of local officials or the fireworks display operator a definite danger exists. The public display must be postponed until weather conditions improve. Light snow or mist need not cause cancellation of the display; however, all materials used in the display must be protected from weather until immediately prior to use.

- No display will begin during periods of wildland fire danger such that the $70^{th}$ percentile of the ignition component (National Fire Danger Rating System) is reached. The display must be postponed or canceled, as appropriate.

- Aerial shells must be fired into the air, as nearly as practical, in a vertical direction, propelled away from spectators and over a fallout area. When the display is beside a lake or other large body of water, the shells may be directed so that fallout shall be in the body of water. The superintendent is responsible for ensuring restricted access to the body of water by first notifying then cooperating with the appropriate authority.

- The debris from the discharged fireworks must be properly disposed of by the operator before leaving the premises. For evening displays, the operator must return the following morning to clean-up the debris.

- Any fireworks that remain unfired after the display is concluded must be immediately disposed of or removed in a manner safe for the particular type of fireworks. The operator, upon the conclusion of the display, must make a complete and thorough search for any unfired fireworks or places that did not fire or function and will dispose of them by dousing them with water and placing them in a bucket of water. The search should begin at the earliest possible time

following the conclusion of the display but in no event later than the first period of daylight that follows. The area will remain secure until the search has been completed.

Display and Discharge Sites: The display site is the area behind the lines or barriers erected to limit access by spectators. The discharge site is the area immediately surrounding the fireworks mortars used for a display.

- The only persons allowed in the display site are the fireworks display operator and assistants, park safety officer, park structural fire coordinator and/or fire management officer, crowd control monitors and representatives of the fire department.

- Monitors must be located around the discharge site to prevent spectators or other unauthorized persons from entering the discharge site. The discharge site must be so restricted throughout the display and until the discharge site has been inspected after the display. Where practical, snow fencing or other barriers must be used to aid in crowd control.

- No alcoholic beverages or controlled substances are allowed within the confines of the discharge site. If any doubt exists about the sobriety or mental capability of either the operator or assistants, the display must be discontinued at once.

- No smoking is allowed in the display site.

- The display site must be free from rubbish, tall vegetation and flammable liquids.

Qualification of Operators: The person in charge of firing the fireworks is the fireworks display operator. This person must be at least 21 years of age, competent for the task and be licensed by the state where the display will be held. Where the state does not require certification, the following must be provided before a permit is issued: (1) proof of age, such as a current drivers license; (2) certification that the fireworks display operator understands the requirements of NFPA 1123, or has a current license to operate a fireworks display in another state; and (3) evidence of active participation in five fireworks displays, including references of fire protection authorities involved with the display. Three of the displays must have been in the prior four years.

Fire Protection: Fire protection equipment must be provided as required by the authority having jurisdiction. Equipment may include portable fire extinguishers for the discharge site and standby fire apparatus for protection down range. All equipment must meet the requirements of the authority having jurisdiction in size and type.

The local fire department should be requested to furnish fire equipment and ambulance service at least 1 hour before the display is to be conducted and until the conclusion of the display.

Any charge for fire protection and ambulance service should be the responsibility of the permittee as a part of the special use permit.

Coordination: The fireworks display operator and assistants must follow all written and verbal directions of the on-site NPS officials.

## SPECIAL EVENT CONSIDERATIONS

The following is a list of ideas and considerations collected from parks and special event coordinators across the Service. It is in answer to the question: What basic ideas do you think about when you plan or construct special conditions you either routinely use or wish that you had used in your special events? Managers and coordinators should realize this is not a complete list as every event is different and not only each location, but every season will require unique solutions. It is provided as a convenience only and may be disregarded entirely if you wish. It is suggested however, that park managers in general and special event coordinators in particular might find some if not all of the considerations below useful, especially during larger events.

Large events in particular are intimidating to plan or manage at first glance, even to the experienced coordinator, and should be broken into small, manageable segments. Experience has shown that after you do this, you need to take each of those segments and play the 'what if?' game. What's going to happen if it rains during the speech? What's the best way to reach someone in the middle of the crowd having a heart attack? How can a fire engine get to that car on fire in the parking lot? What roads/crowds do you have to block off to get the President to the stage and what does that do to your transportation plan? Once you start answering these questions, you can develop good plans and permit conditions (requirements) to cover each concern.

Here than are some of those things to think about. They are in no particular order.

Date and Time - Conflicts, Other demands on facilities, Staffing needs (all divisions), overnight event, time of year (hot or cold and effects of each on crowd and staff), predicted adverse weather conditions.

Facilities - Platform (dimensions and placement), chairs, sound and power, lights, generators, portapotties, water supplies, food, trash cans and disposal, temporary structures.

Staffing - Current staff, additional staff needed, from where, when, travel/per diem, hotel rooms, permittee hired security, shift length, provisions, equipment, PIO for press, black powder monitors, foreign language interpreters.

Crowd - Number, VIPs, press, sale of food (and associated public health inspections/permits), will they fit in the area planned, overflow, metal detectors, traffic flow, location of portapotties.

Rain Plan - Weather reports, alternate sites, availability of structures, transportation, variations to main plan, notification times and methods, who makes final decision, umbrella escort for VIP's, nearest shelters, portable shelters.

Lunch - Caterer, menu, who pays, who eats, where (tent rental?), when, ground condition, access, tables, seating, food storage, trash cans, food for staff, transportation.

Printing - Program design and wording, quantity, deadline, deliver where and to whom, parking passes, special passes, special signs, press handouts, photos

Parking - Capacity, where, special passes, handicapped, VIPs, press, staff, satellite parking and transportation system, traffic and parking control, bus parking, what's the ground like if it rains?

Transportation Plan - access and egress, traffic control, emergency access, roadside parking, cooperation with surrounding jurisdictions, designated public access/pickup points, signs.

First Aid and Safety - Locations, shelter, signs, staff, supplies, ambulances, emergency routes, nearest hospital, helipads and arrangements, fire extinguishers, open fires, black powder, lost and found people and items.

Communications - base station with designated dispatcher(s), recorders, portable radios on same frequency or programmable, spare batteries, generator and fuel, communications plan, cell phones or pagers.

## APPENDIX 11 - MILITARY OPERATIONS

This Appendix addresses the use of park areas by Federal and State military organizations for activities unrelated to the purposes of those parks. These requests should be reviewed in the same way as other requests for non-traditional use and be evaluated on the basis of the same criteria to determine whether or not they would conflict with the NPS mission. A Special Use Permit (NPS Form 10-114) will be the instrument used to allow these activities. Determining when and where military units may conduct activities within park areas is a discretionary decision made by the superintendent.

Some military facilities exist and activities occur in park areas pursuant to restrictions and conditions imposed when property was originally transferred to the NPS. Military activities conducted pursuant to such reservations should be managed through the options that remain available to a superintendent to protect park resources from incompatible uses.

Military activities, in general, should not be allowed in park areas with the exception of those that relate to usual and normal park activities such as search and rescue, outdoor survival, and events not simulating conditions encountered in combat situations.

Superintendents will consider the following requirements when assessing if military activities should be allowed:

- All applicable park rules and regulations will be followed.
- Permits will be required for all military uses and shall include any necessary conditions or stipulations.
- The activities will not unduly interfere with normal visitor use.
- The activity will not consume the resource to a greater extent than that of comparable public use.
- Visitor use levels, where established, will not be exceeded.
- No weaponry will be carried, displayed or used, except for ceremonial purposes, authorized public demonstrations, or in accordance with existing special park legislation.
- A liaison officer will be designated by the military organization to be available to the superintendent throughout the exercise.

References

36 CFR Part 1-7, 12 and 13

# APPENDIX 12 - PERMITTING FORMS

All special park uses must be documented on an approved form or format as described in Chapter 6. There are currently two documents used to authorize special uses in the NPS. The Special Use Permit (SUP) Form 10-114, for most special events, filming and other special uses, is described in this Appendix. The Right-of-Way Permit, used to authorize all utility rights-of-way in parks, is described in Appendix 5.

An example of the SUP, also available electronically, is attached here without headers or footers for ease of reproduction as Exhibit 1. The SUP has three associated application forms. The first, Form 10-930, is a general and purposefully simplistic form, expected to be used for the majority of special uses. This application form, also available electronically, is attached here as Exhibit 2, again without headers or footers for ease of duplication. The second and third application forms are a short (Form 10-931) and long (Form 10-932) application specifically designed for filming. These two application forms may be found as Exhibits 2 and 3 of Appendix 13, Filming and Photography.

The SUP is used throughout the NPS to permit a wide variety of activities and special uses. This form has been in use with only minor changes for years, however two new changes are taking place now. The following information is intended to explain what those changes are and why they are happening now. **[These explanations will only appear in this, the first release of RM-53]**:

- OMB requires all Federal information gathering documents be strictly controlled. As such, it closely examines and assigns discrete numbers to each document it approves. Once OMB approval has been given, the form itself cannot be changed from the approved version without going back through the OMB approval process. In the past, the SUP Form 10-114 may well have been both an application and permitting form which is probably why it received an OMB as well as a NPS number. Modern uses require more and sometimes subject-specific information however, which is why the application forms were approved and the SUP is now only used as a permit. The existing OMB number on the SUP Form (1024-0026) has therefore been removed from the permit (because a permit does not gather information and therefore does not need an OMB approval number). While we are currently operating under a six month emergency approval, an OMB number will eventually appear on each of the three new application forms shown in this Reference Manual when they receive final OMB approval.
- At the time of publication of this first release of RM-53, the NPS has just received an EEO opinion, confirmed by the Solicitor's Office, that the existing Condition number 8 on the back of the pre-printed Form 10-114 does not apply to the activities normally permitted using this form. Condition 8 requires compliance with Executive Order 11246, equal opportunity compliance by those contractors who receive Federal funds and/or assistance for services provided to the Federal Government. Since the nature of the Special Use Permit is to authorize use of NPS facilities by others, compliance with E.O. 11246 should not be required because SUP permittees do not meet the E.O. definition of a contractor. The NPS has been instructed to delete this condition from the SUP form. It has, therefore, been removed from the electronic form (Exhibit 1). Unfortunately, there are a large number of the pre-printed forms still existing in parks and central storage. If for some reason, parks chose to use their existing stock of the pre-printed

form and not use the current corrected electronic version of the 10-114, the parks are instructed to line through or otherwise obscure both the OMB number and Condition number 8 in it's entirety before issuing any of the existing pre-printed SUP Form 10-114's that have both of these items. Parks are strongly encouraged to discard any existing stock they may have of the pre-printed 10-114 and instead use the electronic version of the form which has been updated to Y2K as well as other minor editing improvements. The decision has been made not to pre-print the updated Form 10-114 but rather to use the electronic version exclusively.

When the determination has been made that a requested special park use is appropriate and that a SUP will be issued to allow the activity, the following information should be noted:

- The SUP is designed with an instructional final page giving codes for at least a partial list of the activities covered by the permit. The electronic version of this form includes both the 'standard' conditions on the back, as was true for the pre-printed form, and the page of instructions. Note that the 'standard' conditions may not be changed on the electronic version, but they may be added to, as desired.

- The SUP numbering blocks will reflect the following information. The first four digits (currently labeled REGION) may, at the discretion of the park, now reflect the purpose for which the permit is being used (filming = FILM, Special Event - EVNT). If the park chooses not to exercise this option, these digits may continue to show the region or be left blank. The next four digits (labeled PARK) will continue to reflect the park four digit code. The next four digits (labeled TYPE) will continue to record the type code found on the 'instruction' sheet, and the last three digits (labeled NUMBER) will continue to record the park-assigned sequential number of the permit. At their discretion, those parks that deal with more than 999 total permits a year for all categories of permits, may assign individual numbering sequences by purpose of permit if they chose to exercise this option, and/or increase the numbering blocks as needed to accommodate additional numbers in the thousands.

- SUPs determined to be long term **will be reviewed at least annually** and where appropriate, the fees collected and deposited within 30 days of the annual issuing date. Record the date of the annual reviews in the upper right hand corner of the form.

- Record the statute authorizing the type of activity to be allowed. The legal authority may be found in the enabling legislation for a park area or in the general management authorities for the NPS found at 16 U.S.C. 1-3. A Code of Federal Regulation cite dealing with a specific activity may be included with, but is not a substitute for, the statutory authority. While some parks have special legislation that may be used here, the majority of special events in the NPS are authorized using 16 U.S.C. 1-3.

- Liability insurance in an amount sufficient to protect the interests of the United States may be required as a condition of the permit. A high risk activity, such as fireworks or a black powder demonstration, will always require liability insurance. Insurance could be waived for a lower risk

activity such as a commemorative ceremony at the discretion of the superintendent. The park staff establishes the amount of insurance required, based on local conditions, the relative degree of risk involved in the proposed use, and industry standards. See Chapter 8 for further information on Insurance.

- Determine whether a performance bond will be necessary and, if so, set the amount. For example, if there is potential for litter from a large crowd or possible damage to facilities, a performance bond should be required. The amount of the bond should be adequate to cover all costs of restoration, repair and rehabilitation, and cleanup of the area used if the permittee fails to perform as agreed in the special park conditions. The greater the risk of damage to park land or facilities, the higher the bond. See Chapter 8 for further discussion of Performance Bonds.

- Establish the appropriate charges. The NPS has been directed by Congress to recover all costs of providing services associated with special park uses. In certain circumstances, consideration may be given to waiving the fee. If it is determined not to charge a fee, type "waived" in the appropriate space. A full explanation of why the fee was waived must appear in the Administrative Record for the event. In all cases when a fee is charged, refer to Chapter 10 for the correct account and distribution procedures.

- If the use being permitted involves access to park land for the exercise of First Amendment rights, the manager will issue the permit without any requirement for fees, cost recovery, bonding or insurance. (See Appendix 3) Note the question: “is this an exercise of First Amendment rights” on the application form. If the application is received in the park and then discovered to be a First Amendment use, the application fee will be returned to the applicant immediately and no bond or insurance requirement made. If the park knows the initial request is for a First Amendment activity prior to sending out the application form, a permit may still be appropriate, however any references to fees, cost recovery, insurance or bonding on the application form will be lined through or otherwise obscured before sending it to the applicant.

- SUPs will be approved by the superintendent.

- On the face of the 10-114 form, check off the type of compliance that has been completed. (See Chapter 4.) When referenced, copies of the compliance documentation should be attached to the park's file copy of the permit.

- Any park specific conditions, terms, and local instructions that may be needed,(i.e. access routes, specific times, areas assigned, safety requirements, mitigation requirements, cleanup, or overall performance standards, etc.), must be attached to the permit.

- Form 10-114, the Special Use Permit, should not be altered to accommodate some special circumstance of the park or tailored to lend itself to one use or another. Instead, any special requirements or uses should be noted in the appropriate space and/or accommodated in attached sheets, special conditions, or even the cover letter.

- Form 10-930, the general application form for special use permits, has also been approved by the NPS and OMB, and should not be altered. A great deal of thought has gone into this document and it has been kept purposely general and as simple as possible to fit onto a single page. It is considered adequate to capture the basic information needed for most simple special events. The park may require such additional information as it deems needed on a case by case basis and request same through an addendum to the application or in a cover letter. See Exhibit 2.

Form 10-114
Rev. DEC. 99



**UNITED STATES DEPARTMENT OF THE INTERIOR**
National Park Service

**Special Use Permit**

Name of Use _____

Date Permit Reviewed 20
Reviewed 20
Reviewed 20
Expires 20

Long Term ___

Permit # _ _ _ _ _ _ _ _ _ _ _ _ _ _ _
Region Park Type No. #

Short Term

Name of Area

_____ of
Name or Permittee Address Phone

is hereby authorized during the period from (Time ____ day ___ Month ____ 20__), through (Time

day _____ Month _____ 20__), to use the following described land or facilities in the above named area:

For the purpose(s) of:

Authorizing legislation or other authority (RE - DO-53):

NEPA Compliance: CATEGORICALLY EXCLUDED __ EA/FONSI __ EIS __ OTHER APPROVED PLANS

PERFORMANCE BOND: Required _____ Not Required _____ Amount $

LIABILITY INSURANCE: Required _____ Not Required _____ Amount $

ISSUANCE of this permit is subject to the conditions on the reverse hereof and appended pages and when appropriate to the payment to the U.S. Dept. of the Interior, National Park Service of the sum of $

The undersigned hereby accepts this permit subject to the terms, covenants, obligations, and reservations, expressed or implied herein.

PERMITTEE
Signature Date

Authorizing Official _____,
Signature Superintendent Date

Additional Authorizing Official _____,
(if Required) Signature Title Date

## CONDITIONS OF THIS PERMIT

**1. The permittee shall exercise this privilege subject to the supervision of the Superintendent, and shall comply with all applicable laws and regulations of the area.**

**2. Damages - The permittee shall pay the United States for any damage resulting from this use which would not reasonably be inherent in the use which the permittee is authorized to make of the land described in this permit.**

**3. Benefit - Neither Members of, nor Delegates to Congress, or Resident Commissioners shall be admitted to any share or part of this permit or derive, either directly or indirectly, any pecuniary benefits to arise therefrom: Provided, however, that nothing herein contained shall be construed to extend to any incorporated company, if the permit be for the benefit of such corporation.**

**4. Assignment - This permit may not be transferred or assigned without the consent of the Superintendent, in writing.**

**5. Revocation - This permit may be terminated upon breach of any of the conditions herein or at the discretion of the Superintendent.**

**6. The permittee is prohibited from giving false information; to do so will be considered a breach of conditions and be grounds for revocation [Re: 36 CFR 2.32(a)(4)].**

**7. Permittee will comply with applicable public health and sanitation standards and codes.**

**Instructions for Special Use Permit Form**
(Discard before issuing permit)

**1. This form may be used to permit either LONG TERM (not to exceed 5 yrs) or SHORT TERM (not to exceed 1 yr) uses. Check the appropriate space at the top of the form.**

**2. The permit number requires 14 digits, designed for computerization. The first 4 digits represent the Region symbol or may reflect the purpose of the permit (FILM, EVNT etc.). The next 4 digits represent the park area, the next 4 digits the type of permit (see code below), and the last three the sequential number of the permit e.g. # RMR GRTE 1100 105, a stock driving or trailing permit.**

**3. Note that uses addressed in 36 CFR are identified by the first two or three numbers of the applicable regulation as the first part of the "type of use" code.**

**4. If a performance or resource protection/clean up bond is required so indicate along with amount.**

**5. Generally the NPS will recover all costs associated with issuing a special use permit. (See Chapter 10 of Reference Manual 53). If no fee is appropriate, insert WAIVED in the appropriate block.**

**6. Park areas will append any ADDITIONAL CONDITIONS, local instructions and applications.**

**7. A LONG TERM designation is appropriate for the following type of uses (list is not all inclusive):**

| Code | Type of Use | Code | Type of Use |
|---|---|---|---|
| 1000 | Agricultural (Gen) | 5100 | Advertisements |
| 1100 | Stock Driving or Trailing | 5200 | Alcoholic Beverages |
| 1200 | Stock Watering Dev. | 5300 | Business Operations |
| 1300 | Stock Corrals & Loading Chutes | 5600 | Commercial Vehicles |
| 2600 | Grazing/Pasturing Livestock | 5610 | Chemical Storage Bins |
| 2610 | Residing in Park | 6000 | Other |

**8. A SHORT TERM designation is appropriate for the following types of uses (list is not inclusive):**

| Code | Type of Use | Code | Type of Use |
|---|---|---|---|
| 1100 | Stock Driving or Trailing | 4110 | Load, Weight, Length, Width Limitations |
| 1300 | Trail Rides | 5100 | Advertisements (5.1) |
| 2170 | Air Delivery | 5101 | Eating, Drinking, and Lodging |
| 2171 | Salvage of Downed Aircraft | 5200 | Alcoholic Beverages |
| 2173 | Hang Gliding, Ballooning, Ultralights, & Parachuting | 5300 | Business Operations |
| | | 5400 | Commercial Passenger-Carrying Motor Vehicle |
| 2380 | Explosives, Fireworks | | |
| 2400 | Weapons, Traps, and Nets | 5500 | Commercial Photography |
| 2410 | Transport Game | 5600 | Commercial Vehicles |
| 2500 | Research Specimens(2.5) | 5700 | Construction |
| 2501 | Special Events | 6000 | Military Activities |
| 2510 | Public Assembly | 7000 | Climbing |
| 2520 | Sell/Distribute Printed Material | 7100 | Caving |
| 2620 | Scatter Human Ashes | 8000 | Gate Key |
| 3300 | Vessels/Boat Use | 9500 | Other |

(NPS Form 10-930) (OMB No. 1024-0026)
(NEW 12/99) (Expires 08/31/2001)

# National Park Service
# (PARK NAME)
# Application for Special Use Permit

Please supply the information requested below. Use additional sheets if necessary. Allow at least four (4) business days for processing. A non-refundable processing fee may be required to accompany this application unless the requested use is an exercise of a First Amendment right. You will be notified of the disposition of the application and the necessary steps to secure your final permit. (Note: there may be additional fees charged, and you **may** be required to provide proof of liability insurance.)

Applicant Name:_____ Social Security #

Organization Name (if applicable): _____ Tax ID #

Street/Address:

City/State/Zip Code:

Telephone number:

Description of Proposed Activities:

Requested Location:

Date (s): _____ Set-up will begin at:

Event will begin at: _____ Removal will be completed by:

Maximum Number of Participants _____ (Please provide best estimate)

Maximum Number of Vehicles _____(attach parking plan)

Support Equipment (generators, amplification, etc.)

Support Personnel (contractors, etc.)

Individual (if other than applicant) in charge of event on site:

| | | |
|---|---|---|
| Is this an exercise of First Amendment Rights? | Y | N |
| Are you familiar with/ have you visited the requested area? | Y | N |
| Do you plan to advertise or issue a press release? | Y | N |
| Will you distribute printed material? | Y | N |
| Is there any reason to believe there will be attempts to disrupt, protest or prevent your event?(if yes explain on separate sheet) | Y | N |

The applicant by his or her signature certifies that all the information given is complete and correct, and that no false or misleading information or false statements have been given.

Signature _____ Date

Return this application to: Permit Coordinator
National Park Service
ADDRESS
Phone (XXX) XXX-XXXXX Fax (XXX) XXX-XXXX

**Paperwork Reduction Act Statement:** This information is being collected to allow the park manager to make a valued judgement on whether or not to allow the requested use. All the applicable parts of the form must be completed.

**Estimated Burden Statement:** Public reporting burden for this form is estimated to average 30 minutes per response including the time it takes to read, review instructions and complete the form. Direct comments regarding this burden estimate or any aspects of this form to the National Park Service Program Manager, Special Park Uses, Ranger Activities Division, 1849 C Street, NW., Washington, D.C. 20240 and to the Information Collection Clearance Officer, Washington Administrative Program Center, 1849 C Street, NW., Washington, D.C. 20240. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

# APPENDIX 13
# FILMING AND PHOTOGRAPHY

## INTRODUCTION

This appendix is designed to provide Service-wide consistency, and sets forth the requirements and procedures applicable to permitting filming and photography (filming) in units of the national park system. These are to be used in addition to the requirements and procedures included in Chapters 1 through 10, and other applicable appendices of this Manual. Special circumstances specific to individual park areas will require additional conditions aimed at preventing the impairment or derogation of resources, values and purposes for which the area was created.

## POLICY

It is the policy of the National Park Service (NPS) to allow filming and photography when it is consistent with the protection and public enjoyment of park resources. The NPS encourages filming when it is for the specific use of the park or when it assists the NPS in fulfilling its mission. The NPS has the authority and responsibility to manage, permit and/or deny filming projects consistent with the following principles:

- Natural, cultural, wilderness, and recreational resources will be protected.
- The activity will not unduly conflict with the public's normal use and enjoyment of a park.
- Visitors using cameras and/or recording devices for their own personal use are generally **exempt** from film permit requirements.
- A commercial photographer who is not using a prop, model or set, is staying within normal visitation areas and hours, and is not significantly interfering with normal park visitation, is generally **exempt** from film permit requirements.
- Coverage of breaking news **never** requires a permit, but is subject to the imposition of restrictions and conditions necessary to protect park resources and public health and safety, and to prevent impairment or derogation of park values.
- The NPS will not censor the content of any project, nor require finished film products for review, files or documentation purposes. However, a superintendent may review a story board or other material offered by the applicant to aid in the decision process.

Commercial photographers, and their crew, who obtain a filming permit from the NPS are recognized as not being in the park for recreational purposes for the duration and purposes of that permit, and as such,

are specifically exempted from paying entrance fees under the Land and Water Conservation Fund Act (LWCFA) and the current Recreational Fee Demonstration Program.

The Special Use Permit (Form 10-114) is the instrument used to authorize filming or photography. The park superintendent shall determine when a permit for filming or photography will be required and what costs and other fees, if any, must be recovered. During certain times (e.g., periods of peak visitation or high fire danger) the superintendent may deny any or all requests for special use activities, including filming. If filming activities are inherent in an event or activity for which a Special Use Permit has been or will be issued, conditions and permission for filming may be included in that Special Use Permit rather than writing a separate filming permit.

A permit is required if the filming, video taping, sound recording or still photography involves the use of a model (or any on-camera talent), set, or prop, or when the filming, video taping, sound recording, or still photography could result in damage to park resources or significant disruption of normal visitor use. A permit is also required if the photographer wants to go into areas not open to the public or before or after normal visitation hours.

All projects will be reviewed to ensure protection of the park's resources and values, and to prevent adverse impact on neighboring communities and non-park interests. The permitting process provides the superintendent and the applicant an opportunity to discuss the proposed project and to establish reasonable conditions to protect NPS interests. If the impacts of the project can be mitigated to the superintendent's satisfaction, a project request may be approved, but only using a NPS permit. **Park managers will not sign location releases supplied by applicants**. The NPS cannot control filming or photography projects occurring outside park areas, even though they may include a simulation of park features, uniforms or other equipment.

Documentation of the application and permit review process serves as at least the beginning of the administrative record, and should include the reasoning behind permit restrictions and any waivers of restrictions. (See Exhibit 4 Administrative Record Checklist)

The NPS policy for still photography is attached to this Appendix as Exhibit 1. Among other purposes, it is primarily intended as a handout for still photographers.

## MEDIA CONSIDERATIONS

### First Amendment Rights, Permits, and Cost Recovery

Some filming projects fall under the category of First Amendment activities. These are most often breaking news stories but it could be other activities, such as participants in a demonstration making their own film to record the event. (Refer to Appendix 3) Just as is true for any other type of park use, the potential for resource impairment or damage or, in some cases, the proposed actions of a group that might pose health and safety concerns both to itself and visitors, may trigger the requirement for a

permit. The fact that a permit may be required for filming does not mean that the Government may censor or control a film's content. In addition, the NPS shall not require the payment of fees, insurance coverage or a performance bond for a First Amendment permit, nor shall it recover its costs incurred in managing the activity as needed.

**Breaking News**

Superintendents must recognize that normally the filming of news-breaking events will not require a permit. Breaking news is an event that cannot be covered at any other time or location. Coverage of breaking news will not require a permit, if no advertising, and no set, prop, or model is used and there is no derogation of park values or disruption to park visitation. It is, however, subject to restrictions and conditions necessary to protect park resources and public health and safety, and to prevent impairment or derogation of park resources and values.

**Other Media Coverage**

In some instances the NPS may see significant benefits from the production of "human interest" or "travelogue" segments filmed in parks. These benefits may include educational information on park programs, public awareness of park-specific problems and constituency building which could aid in accomplishing the mission of the NPS. The cost of otherwise reaching such a large audience is often prohibitive, and the benefit of such media exposure often exceeds the direct cost to the park in permitting and/or monitoring the production. With this in mind, the superintendent may reduce or waive fees for projects that provide benefit to the NPS based on the amount of value received by the NPS.

## PROCEDURES

**Resource Protection**

The superintendent will always give priority to attaining park management and resource protection objectives to include the full range of resources protected by the park. Permit requests involving unmitigatable threats to the resource shall be denied.

**Natural Resources.** NPS policy defines natural resources as plants, animals, water, air, soils, topographic features, geologic features, paleontologic resources and aesthetic values, such as scenic vistas, natural quiet and clear night skies. The primary managerial concern is to prevent loss or degradation of these resources.

**Wilderness.** The Wilderness Act imposes additional use restrictions on Federal lands that have been designated as Wilderness. [Consult 16 U.S.C. 1133(c) and (d).]

**Cultural Resources.** Cultural resources are, with few exceptions, nonrenewable. Once their historic or cultural fabric is compromised, their authenticity cannot be replaced. The primary managerial concern of filming or photographing any artifact or cultural material is to prevent loss or degradation of the resource. **Managers must recognize the need for project evaluation by subject matter experts.**

**Community and Ecosystem Resources.** When evaluating projects, superintendents may take measures and include permit conditions that would prevent adverse impacts on the surrounding communities and resources. The superintendent is encouraged to discuss the proposed project with the surrounding affected parties. These discussions should include, but are not limited to, resource protection issues, noise, economic impacts, other scheduled activities, pedestrian and vehicle access, traffic flows, availability of visitor parking, as well as the permittee's needs for staging vehicles, equipment and related project activities.

## Visitor Experience

Filming activities will not unduly interfere or conflict with visitors' normal use and enjoyment of the park. superintendents will examine each request to film or photograph in order to evaluate potential effects on visitors. Public health and safety issues must be identified and resolved. When evaluating a request the superintendent must make the following determinations:

- Will the requested activities have a detrimental effect on the visitor experience?
- Will the requested activity necessitate closing a portion of the park to visitors for the duration of the permitted activities? Is there an alternative location or time?
- Will other areas of the park remaining available to visitors provide comparable park experiences?
- Can the requested activities be scheduled when visitors are not normally present?

If impacts on visitor use can be mitigated to the satisfaction of the superintendent, a project may be permitted. During peak visitor use times, the superintendent may deny all requests for special use permits, including filming permits.

## Park-Specific Guidelines and Procedures

Parks shall use DO-53 and RM-53 as a basis for developing procedures for special uses specific to their areas. This assures an efficient and consistent response to all permit applicants. Park specific procedures must be crafted considering:

- The park's enabling legislation and other park specific legislation.

- The General Management Plan, Development Concept Plan, Natural and Cultural Resources Management Plan, Backcountry Management Plans, Concessions Management Plan, Statement for Interpretation, Standard Operating Procedures and the superintendent's Compendium.

- Visitor use patterns identifying times, seasons and areas and associated carrying capacities.

- Site specific conditions for different sites or portions of the park.

Exhibit 7 is an outline of suggested topics for consideration when drafting a park specific guideline. Once completed by the park staff, the park's guidelines should be shared with regional and state agencies and organizations involved in tourism and economic development. These organizations are often contacted for assistance in finding locations and should be informed of NPS permit requirements.

By taking the initiative to communicate with these agencies, the superintendent demonstrates that the NPS is sensitive to the economic benefit of filming to the region. When the agencies are aware of the park's filming limitations and restrictions they can pre-screen inquiries and divert to other locations those applicants whose requests cannot be accommodated in the park.

## Recovery of Cost and Fees

The Service has the authority to recover and retain all costs of providing necessary services associated with filming activities. Guidance for the recovery of costs is found in Chapter 10. The authority, policy and procedures involved with the recovery of all other fees related to filming and photography is contained in Exhibit 9 attached to this Appendix.

## The Permit Process

The permitting process provides the superintendent an opportunity to discuss the proposed project with the photographer or film maker, and also serves as an administrative record. This can be a simple or multi-stage process depending on the complexity of the project.

**Pre-Application Activity.** The park should prepare a short summary of the park specific guidelines as a preliminary communication with permit applicants to facilitate their understanding of the permit process. Exhibit 5 (application information sheet) is an example of how this type of information might be presented.

- Prospective applicants should be advised of permitting requirements, anticipated length of project review and overall time frame.

- The applicant will be informed that the proposed project will be evaluated to determine the effects on park resources, staff and public use. Public health and safety issues must be identified and resolved.

- Park staff should consult with the appropriate regional coordinator for assistance with projects involving unusual problems or circumstances.

**The Application.** Examples of application forms are attached here as Exhibit 2 and 3. The two forms shown have been approved by NPS and OMB, and one or the other will be used unless specific written permission is given from the regional office not to use them. Park specific information not found on either form but still desired, may be asked for in the cover letter sent with the form and supplied by the applicant as an attachment. The forms **will not be altered**! Both forms are presented without headers or footers for ease of duplication. Electronic copies may also be requested from your regional coordinator and are available to the public on the NPS URL for forms.

The Short Form: NPS Form 10-931. Exhibit 2 is the more simplistic application form to be used for smaller filming projects. This application form is purposefully short and simple to fit this specific need. Any additional information may be gathered as the process progresses or on additional pages as needed. It is expected that this will be the form most used Service-wide.

The Long Form: NPS form 10-932. Exhibit 3 is for larger filming projects that may involve factors not covered on the shorter form. It is expected that this form will not be used as frequently as the shorter form, but even if not used, is available to offer the permit coordinator the opportunity to ask questions that might help evaluate the potential scope of the permit request at an early stage in the process. This could save time and effort for both the coordinator and the applicant. Production companies appreciate finding out promptly if the project cannot be accommodated by the park. Also, some of the terms used in the long form may not be familiar to the permit coordinator but will be familiar to the applicant. (See Exhibit 8 Glossary of Terms and Conditions)

If the initial description of the film is so vague that the coordinator is unsure of which form to use, and/or the initial request is obviously complex, the coordinator is encouraged to ask for assistance from their regional coordinator. At the very least, the regional coordinator will be able to recommend more experienced filming coordinators in the region to call for advice. If the initial request indicates that more substantial assistance is needed than may be available at the park, the superintendent may request on-scene assistance from an experienced filming coordinator with the applicant paying all costs involved in travel, per diem, and salary.

Applications may be requested in person or by telephone, fax, E-mail or letter. Once the application has been completed it must be returned to the park.

Application Review: The application review and evaluation process takes time and will vary depending on many factors.

- At a minimum, for simple projects, the application should be received in the park's headquarters office at least four (4) working days in advance of any project. More time may be required depending on the complexity of the project and the availability of personnel. Some requests will require several weeks or more to allow for adequate review of the proposal.

- The superintendent will advise the applicant of the time frame anticipated for the review process, particularly for complex projects.

- During the evaluation process the superintendent must ensure an open and on-going dialogue with the applicant. This provides an opportunity to obtain additional information about the nature and extent of the proposed project. It is also essential that the conditions that will govern the filming activities, and the reasons for them, are explained.

- If filming activities are inherent in an event or activity for which a Special Use Permit has been or will be issued, conditions and permission for filming may be included in that Special Use Permit rather than writing a separate and/or additional filming permit.

The park superintendent is the authorizing official.

**Rejection/Denial of a Permit:** Any one of the following criteria may justify the rejection of a permit application:

Resource Impairment or Damage. Damage to a resource is anticipated, and such impairment or damage cannot be mitigated to the satisfaction of the superintendent

Disruption of visitor use or normal park operations. The superintendent determines that a proposed project will conflict with the public's normal use of a park, or with normal park operations, and a resolution cannot be negotiated to minimize the impact

Closed Areas. The applicant requests access to areas closed to the public, or requests to conduct activities not allowed *unless*:

- It is beneficial to the NPS to increase public awareness or understanding.

- The superintendent recognizes that there are additional factors that may be beneficial to the Service.

- There are other mitigating factors that would not cause resource damage or endanger public safety.

Supervisory Requirements. The project would place unreasonable burdens on the park staff. The rejection may occur regardless of the permit applicant's willingness to pay for administrative or overtime expenses associated with supervision. However, the superintendent may consider bringing in employees from other parks to assist.

Illegal Portrayals. The project depicts activities that are not permitted within a recognized park area, i.e. defacing a monument, etc.

Inability to Obtain Insurance/Bonding. The applicant is unable to obtain the necessary bond and/or insurance certification.

Failure to Agree to Pay Assessed Cost Recovery. The applicant is unwilling to agree to pay the estimated cost recovery.

If an application is denied, the applicant will be informed in writing. The letter should be as timely as possible and must include the grounds for rejection. The applicant should be reminded that application charges, if assessed, are not refundable. If substantial staff resources were expended in the evaluation of the request the applicant may be billed for the additional costs.

**Permit Considerations.** Exhibit 6 identifies a number of possible conditions that could be modified to address specific park needs and included in a permit. Bear in mind that one of the most important conditions that should appear in all permits is that non-compliance with any of the permit conditions will or might result in revocation of the permit. In addition, the permit shall contain conditions or restrictions relating to such factors as:

- Weather or seasonal limitations.
- Visitation levels.
- Fire prevention requirements.
- Special circumstances, such as the use of vehicles, stunts, special effects or government work areas.
- Access to park facilities, structures and resources.

**Safety Considerations.** Depending on the nature of a project, and the potential hazards associated with it, the superintendent may require the permittee to have on-site medical, water safety and/or fire personnel.

- Any safety plan required by Federal, state or local law will be submitted to the superintendent prior to the approval of a permit, and will become a condition of the permit.

- Inspections, licensing or monitoring required by Federal, state or local statutes must be adhered to by the permittee.

**NPS Supervision and Costs.** Filming activities will be monitored by a qualified NPS employee to assure full compliance with all of the terms and conditions of the permit. NPS staff will monitor all aspects of filming at levels based on company size and project scope.

- When a project involves substantial numbers of people and equipment, supervision will be on-site and continual.

- The superintendent or a representative may spot check during the filming to assure compliance when the operations involve only a few people or minimal amounts of equipment, or take place in areas where there is little, if any possibility of resource impact, inconvenience to visitors or violation of permit conditions.

- The superintendent may consider bringing in other Service employees to assist in those instances when the scope of the project exceeds the park's ability to properly manage the activity. The resulting staff costs (e.g., salary, overtime, backfill, travel and per diem) will be recovered from the permittee.

**Pre-Activity Meeting.** After the approval of an application, and before the activity begins, the permittee (including, but not limited to the producer, director, location and/or production manager) will meet with the superintendent or designate to:

- Review the final terms/conditions, scheduling, and any special instructions pertaining to the respective project.

- Complete an on-site visit, if necessary.

- Provide an original certificate of insurance and, if required, a bond.

- Pay estimated costs, if required.

- Sign and obtain a copy of the Special Use Permit.

The necessity of this meeting will be at the discretion of the superintendent, based in part on the scope of the project, the availability of personnel, and how that park handles filming projects.

The meeting for a small project that has minimal potential for impact on the park may occur over the telephone. The superintendent may also determine those situations in which faxed signature pages will be acceptable, with the understanding that the ‘original’ signed page is forthcoming by the most expedient method.

**Delays, schedule changes.** The NPS recognizes that filming projects are subject to many changes and are influenced by many factors, including creative processes, weather, budget overruns and the availability of personnel and props.

- After the permit has been approved, minor changes in the permit activity may be made by means of an amendment, or with on-site NPS monitor approval. Major changes may require the issuance of a new permit.

- If additional costs are incurred due to such changes the permittee will be billed to cover all costs.

- Permit activities suspended for reasons beyond the permittee's control may, by agreement with the NPS, be rescheduled for a later date.

Notification of initial delays or schedule changes for start of activities must be provided to the NPS at least 36 hours in advance. Failure to provide such advance notification will result in a non-refundable, minimum charge for each staff person scheduled for the activity. This charge will be the equivalent of two hours overtime for each employee assigned. Additionally, any costs incurred by the NPS anytime during the application, permitting, or operational process are fully recoverable. These costs may be recovered through the posting of a bond at the time of application, or through a bill for collection presented at any point after initial contact.

**Suspension, Revocation.** Definitions:

*Suspension* refers to an action by the superintendent or designate to halt permitted activities due to violation of a permit condition. Permit privileges may be reinstated upon the correction of the problem. *Revocation* refers to an action by the superintendent to end the permit because of noncompliance with any of the prescribed terms or conditions. Should a permit be revoked, the previous permittee must remove all personnel and equipment from NPS property.

If resource damage occurs or is imminent, all filming activities will be stopped immediately. Violation of any of the permit conditions will result in suspension or revocation.

NPS personnel assigned to work with permittees should be pro-active. Any conditions or activities which, if not corrected, could lead to violation of the permit must be brought to the attention of the permittee.

The superintendent should be prepared to take recourse if deliberate infractions occur. In such a case, the permit will be suspended and the superintendent, if anticipating legal action, may inform the Regional Director. The permit may be revoked, and legal action is possible, if the superintendent determines that a permittee made deliberately false and/or misleading statements concerning intended actions in order to obtain a permit.

**NPS Personnel Working for Permittee.**

There is a potential for conflict of interest when NPS employees are invited to work directly for filming companies. Before proceeding with an off-duty employment request the supervisor should read and refer employees to the Department's regulations regarding employee conduct (43 C.F.R. 20.735-23). Off-duty employment requests must be approved by the superintendent.

- Personnel engaged in official supervision, negotiation or permit approval are not permitted to engage in off-duty employment.

- Other employees may work, off duty and not in uniform, for a film company only if they do not perform or appear to be performing official duties for the permittee.

**On-Camera Appearance by Employees**

On-camera appearances by employees are allowed under the following conditions:

- The employee is selected and/or approved by park management, and is depicted performing his or her normal duties, or serving as a subject matter expert.

- The employee's appearance supports NPS goals and has a beneficial effect for the Service.

- The role is not scripted.

- The employee is paid by the park as part of his or her regular working hours. The permittee will reimburse the park for this cost as part of the monitoring cost recovery.

- If the filming requires overtime or back-filling of positions, the NPS will be reimbursed for any such additional costs through the permitting process.

**Gratuities**

The Standards of Ethical Conduct for Employees apply. Generally permittees come under the category of Prohibited Sources; employees are forbidden from accepting gratuities from prohibited sources. However, there are exceptions that allow employees to accept modest items of food and refreshment.

The NPS recognizes that the work-day for a film production company typically lasts longer than eight hours. NPS employees assigned to monitor permit activities must be prepared to sustain themselves over the entire time span. The superintendent may, on a case-by-case basis, grant the employee permission to accept provisions from the permittee.

- If the permittee offers meals, the superintendent may authorize the employee to accept the food provided.

- Market values of the individual meals, and aggregate market value of all meals, provided by an individual permittee may not exceed the limits set in 5C.F.R Part 2635.204.

**Insurance and Liability**

**Waiver of Insurance.** The superintendent has authority to waive the insurance requirement if there is no perceived risk of injury or damage to persons or property resulting from the activity. If no permit is required, no evidence of liability insurance is required.

**Purpose of Insurance.** General commercial liability insurance will help protect the Government from judgments connected with injury or damage resulting from the actions or inaction's of the permittee or his/her agents, contractors or employees. The Service may require additional insurance for certain high-hazard situations. The policy must contain the following elements:

Risk of loss. The permittee assumes all risk of loss of his/her property.

Damage to government property. The permittee has a duty to protect from injury and damage the land, property, resources, historic features and other interests of the government.

- The permittee will compensate, in full, the government for damages resulting from activities in conjunction with a permit. Compensation will include restoration, cleanup, all needed repair, and all administrative costs.

- Invaluable historic objects or historic facilities deemed non-restorable shall not be placed at risk. In those rare instances when use is permitted, proper safeguards and mitigation shall be required and plainly stated in conditions of the permit.

Indemnification and liability of the government. The permittee will comply with all applicable Federal, state, and local laws and regulations, as well as all permit conditions. In addition, the permittee will indemnify, defend, and hold the U.S. Government harmless for any violations incurred under any such laws and regulations or for any costs, damages, claims, liabilities or judgments arising from acts or omissions of the permittee in connection with the use and/or occupancy provided by a permit.

**Evidence of Insurance.** Photographers and video or film production companies that are required by permit to provide proof of insurance must carry general commercial liability insurance issued by a *United States company*.

- The insurance certificate must identify the production company by name with their business address. If the permittee uses a different company name, the relationship between the named insured company and the permittee's company must be identified.

- The "United States Government" will be named as additional insured on the insurance certificate. If further specificity is desired or requested, "the Department of the Interior, National Park Service, (park name)" may be added. The park name and address should be used as the local contact. Certificates naming the U. S. Government as "certificate holder" only are not acceptable.

- Personal or homeowners liability insurance is not acceptable. Generally, insurance companies will not extend personal or homeowners liability insurance to additionally insure the Federal Government. The permittee must obtain a policy as described above.

- Failure to provide proof of proper insurance is reason for denial of the permit.

**Establishing the Amount of Insurance.** When establishing the monetary amount of required insurance the superintendent should consider the risk to the park resources, the complexity of the activities, the number of people involved, equipment and vehicles, the magnitude of support and catering services, the number of days of shooting and preparation and clean up, as well as any other relevant circumstances.

Insurance amounts can vary from several thousand up to several million dollars. Generally, the NPS will accept the following:

- Personal liability minimum of $300,000.

- Minimum commercial liability (still photography, or for small film/video projects of fewer than 15 people) of $500,000.

- General commercial liability for video or film production companies of $1,000,000.

- When using boats, employing stunts or other higher risk activities, the range is from $2,000,000 to $5,000,000 or more.

**Performance Bond Requirement**

**Purpose of the Bond.** The purpose of the bond is to insure that the resource is left in as good condition as it was prior to the filming, and to cover restoration costs. Generally, bonds will be required in amounts at least equal to the estimated cost to the Government for clean-up and/or restoration that would be necessary if the permittee failed to meet NPS permit conditions. A performance bond may come in various forms, for example a cashiers check, certified check, irrevocable terms of credit, or similar negotiable instruments, paid for by the permittee/production company to cover resource damage resulting from the activities of the permittee.

- The superintendent may set the bond requirement at zero if the activities permitted will not require clean-up or restoration.

- A bond is never to be used as a penalty.

- A bond may also be used to recover NPS costs (administrative and monitoring/management) **only** if the superintendent specifies it as a condition of the permit.

- The bonding instrument must provide the superintendent with immediate access to the funds when needed.

- Personal or corporate checks may be acceptable in some circumstances.

**Use of the Bond.** Those bond amounts, paid in advance, should be deposited into the designated park account upon receipt. Should the permittee fail to perform any part of the necessary clean-up or restoration, or fail to reimburse the NPS for costs associated with the permit, the account will be used to make any payments necessary. Any remaining balance will be returned to the permittee. If the bond is insufficient to cover costs the permittee will be issued a bill for collection for the amount of the deficit. Bonds must be handled appropriately and accounted for at all times. Funds from bonds, including letters of credit, shall be withdrawn only in the amount owed to the NPS.

**NPS Participation in Filming or Photography Activities**

**Projects Occurring Outside of NPS Jurisdiction.** This section applies to projects occurring outside NPS jurisdiction without NPS funding over which the NPS has no control. These may portray NPS programs, policies, resources, persons, events or topics relevant to the educational mission of the NPS. Such films may be documentaries, docu-dramas or feature-length films. It is sometimes in the best interest of the NPS to offer technical assistance to the producer to insure that the NPS, its resources or other matters of importance to the Service's mission are accurately portrayed or represented.

Since this assistance would be provided on a mutually agreeable basis, and since NPS suggestions would not be binding on the producer, there would be no issue of censorship. Depending on the complexity of the arrangement, a letter of agreement or a General Agreement would be appropriate. (The letter or GA, rather than a Cooperative Agreement, would be appropriate because the NPS would not be contributing funds toward production costs.) When the NPS provides assistance of this nature, a clear understanding must be reached with the production company as to whether or not, and in what way, the NPS's role will be acknowledged in the film.

While reimbursement of NPS costs is desirable in these situations, the producer is not obligated to provide reimbursement, unless the filming will take place on NPS lands and a permit is required. If the

producer will not provide reimbursement, the NPS must determine if the prospect of unreimbursed costs is outweighed by the value to the NPS of providing more accurate information to the viewing audience.

**Projects in which the NPS has Direct or Indirect Involvement or Control.** The NPS sometimes produces films to aid in accomplishing the NPS mission. Productions that are partially, directly or indirectly funded by the NPS must be accomplished through a contract or a Cooperative Agreement. The use of a contract is appropriate when the film will simply be a product developed to NPS specifications, using either appropriated or donated funds. The use of a Cooperative Agreement is appropriate when the production is funded and controlled, at least partially, by some other entity with whom the NPS is collaborating.

Films produced under contract or Cooperative Agreement are generally limited to documentary or instructional films. They must be approved by the appropriate Regional Director and, in most cases, must be coordinated at the earliest stages with the Harpers Ferry Design Center. Contracts or agreements for filming must contain provisions which address the following matters:

- NPS personnel assigned to assist the filmmaker.
- Use of NPS equipment by the filmmaker.
- Use of the Arrowhead Symbol by the filmmaker.
- Ownership of the finished product and raw material.
- Purchase of prints by the NPS.
- Control of future distribution or editing of the film.
- Termination for default and/or convenience.
- Performance bonds and general liability insurance.
- A clause to eliminate possible liability of the United States Government arising from the filming activity.

## Credit Lines

**Credit Line Prohibition:** A credit line is specifically prohibited in instances involving product or commercial advertisement, in films promoting an industry and in films designed to influence Congressional initiatives.

**Optional Credit Line:** The superintendent may request a credit line in films produced in whole or in part on Service lands provided that the content or subject matter of the filming product would not reflect adversely on the NPS. A producer's willingness to give a credit line will not be a consideration in the granting of a permit.

**Format of Credit Line:** The suggested format for a credit line is:

Name(s) of Area(s)
NATIONAL PARK SERVICE
U.S. DEPARTMENT OF THE INTERIOR

**Use of Museum Collections:** Refer to the Museum Handbook for credits relating to Museum Collections.

## Government Property and Symbols

**Government Property:** Government property, including the uniform, will not be used, loaned or rented to a film company, or diverted from its normal use, for filming purposes except as stated below. (See 43 C.F.R. 20.735.15.) Rental of NPS equipment on a reimbursable basis pursuant to 16 U.S.C. 1-b(5) is authorized only to persons who "render services or perform functions that facilitate or supplement activities of the Department."

**Government Symbols:** Use of the NPS Arrowhead in titles, credits or other deliberate disclosures requires the permission of the NPS Director (36 CFR 11.2 and Special Directive 93-7).

- Special Directive 93-7 declares that use of the Arrowhead is controlled through law and regulation. Hence, under 36 C.F.R. 11.2, the Director may authorize the use of the Arrowhead "for uses that will contribute to purposes of education and conservation as they relate to the program of the National Park Service." The NPS may actively assist filming and photography activities that promote public understanding and appreciation of the National Park System, and the Director may authorize use of the arrowhead symbol for such filming projects. All other uses are prohibited, such as advertising, promotional or directly commercial purposes.

- Incidental filming of the symbol which may include the shoulder patch of an uniformed employee, an NPS vehicle or an entrance or similar sign is not prohibited.

## Museum Collections

Refer to the Museum Handbook for regulations.

## High-Risk Activities and Special Effects

Filming projects sometimes include proposals for stunts or special effects. The NPS must thoroughly evaluate these requests for their potential impact.

**High-Risk Activities:** Any filming project that involves high-risk activities, e.g., performance driving, skydiving, stunt flying, hang gliding, ballooning, bungee jumping, etc., will undergo thorough review to determine its proximity to significant resources or its potential for conflict with existing regulations.

Stunts are high-risk activities that involve an elevated risk and are performed by specialists trained to accommodate the risk.

- The safety of the performer/team is the permittee's responsibility.

- Technical necessities for safe completion of the stunt(s) must be explored in detail during the application evaluation process.

Safety measures protecting the crew, visitors and park resources must be thoroughly reviewed by the NPS, the permittee and the stunt coordinator during permit negotiations, and again on-site before any preparations for the stunt can begin.

**Special Effects:** Special effects can be visual, mechanical or pyrotechnic. Evaluation of requests for special effects will necessitate a review of all relevant regulations, directives and policies, as well as applicable regulations or licensing requirements of other agencies on Federal, state, and local levels.

- Visual special effects are created in editing using matte shots or paintings to create a background picture, blue or green screens to allow an actor in a shot to be placed against a different background or computer generated images. Normally they do not impact filming or photography on NPS property.

- Mechanical special effects include the use of wind machines, smoke-making devices or compounds, simulated rain, snow or fog, or breakaway "glass", wood or other material. Use of mechanical special effects such as smoke, wind machine or simulated rain or snow must be evaluated for: the types of materials to be used, chemical content, the potential for residue, hazards connected with introduction of the material into the environment or water sources and methods of removal or clean up.

- Pyrotechnic special effects include any devices which are ignited. This includes, but is not limited to, the discharge of blank cartridges, black powder, squibs, sparks, open flame, bullet hits, propane fire ring, aerial fire works, artillery fire, explosions, mortars and fire balls.

- NPS policy on black powder is addressed in NPS-6.

- Review Appendix 10, Exhibit 1, Fireworks Displays.

Some states license individuals for the handling of certain materials, and in some areas daily permits are required for the use of air polluting materials or pyrotechnic special effects.

**Aircraft/Airspace**

**Authority:** Although the Service does not regulate the airspace above park areas, NPS does have the authority to control landing of aircraft, airborne delivery, excessive noise, and activities on park property which are filmed/photographed from the air. Because of this, superintendents might consider that a permit written to allow helicopter landing within the park could also impose other conditions not otherwise available for imposition or enforcement.

**FAA, OAS and Service Guidelines:** All aviation activities will be performed in accordance with applicable Federal Aviation Administration (FAA) regulations, Department of the Interior policies and other Service guidelines. (See NPS-60, Aviation Management.)

- The FAA Advisory Circular (91-36C) encourages a minimum altitude of 2,000 feet above the highest landform to reduce any potential interference or impact on wildlife, visitor uses, sensitive natural or archeological sites or recreation use from low-flying aircraft.

- The Office of Aircraft Services (OAS) also has established responsibilities, policies and procedures for the overall management of aviation matters when government employees are involved. (See Department Manual parts 19, and 350 to 354 and Special Federal Aviation Regulation 50-2.)

- Should an infraction of FAA regulations regarding safety or the protection of persons and/or property on the ground occur, record all pertinent information on the incident, including the aircraft number. Immediately report the incident to the local FAA Flight Standards District Office.

**General Conditions:** The use of aircraft over NPS areas for commercial filming projects is generally considered undesirable. Any request for aircraft use will be carefully evaluated to determine the kinds of impacts from the proposed aircraft.

- Aircraft activities will be allowed only under very restricted conditions or within park standard operating procedures, or park specific or general legislation.

- An aircraft use request that has clear potential for the disturbance of wildlife and/or the visitor experience or the derogation of park resources will be denied.

- The landing of fixed wing aircraft is prohibited unless authorized under general or park specific statue.

- Helicopter landings are restricted to designated heli-spots.

## UNAUTHORIZED FILMING

Some filmmakers or photographers may be unaware that certain filming activities require a permit, cost recovery, insurance certificate or performance bond. When the superintendent or a park staff member becomes aware that filming activities that would normally require a permit are being conducted without a permit, he/she will contact the individual or group, explain the requirements necessary to comply with regulations and resolve the issue as soon as possible. A photographer or filmmaker who fails to obtain a required permit may be subject to arrest.

## REFERENCES

16 U.S.C. 1-b (5) - Supplies and Rental of Equipment; Reimbursement
16 U.S.C. 1133 - Wilderness Act
18 U.S.C. 1001 - Fraud and False Statements
36 C.F.R. 2.17 - Air Delivery
36 C.F.R. 5.5 - Commercial Photography
36 C.F.R. 11.2 - Use of the Arrowhead
43 C.F.R. Part 5.1 - Making pictures, television productions or soundtracks on certain areas under the jurisdiction of the Department of the Interior
NPS-20 Cooperative Agreements
NPS Museum Management
NPS-60 Aviation

## STILL PHOTOGRAPHY

It is the policy of the National Park Service (NPS) to allow and encourage photography within the National Park System, consistent with the protection and public enjoyment of resources.

The NPS will not require a permit for photographers, commercial or non-commercial, to go anywhere or to do anything that members of the public are generally allowed to go or do without a permit. This is true whether or not the photographer uses tripods, strobe lights, or interchangeable lenses. Coverage of breaking news never requires a permit but is subject to restrictions and conditions necessary to protect park resources, public health and safety, and to prevent impairment or derogation of park resources, values or purposes.

A permit is required if the superintendent determines there is a potential of a photography project's harming or having an impact on the park's natural, cultural or recreational resources, or creating unacceptable health or safety risks, or disrupting visitor use and enjoyment. A permit is also required pursuant to 36 CFR 5.5(b) for persons taking photographs of vehicles, other articles of commerce or involves the use of a model, set or prop for the purpose of commercial advertising.

If a photography permit is required, the NPS will impose only those conditions necessary to accomplish the needed resource protection or visitor enjoyment objectives. Liability insurance requirements and other limitations should not be made unduly burdensome. For advertising photography, it is appropriate to impose a permit condition that prohibits implied or stated Service endorsement of the advertised product or service.

**(NPS Form 10-931)** **(OMB No. 1024-0026)**
**(NEW 12/99)** **(Expires 08/31/2001)**

**NATIONAL PARK SERVICE**
**(NPS Site Name)**
**(Address)**
**Application for Photography/Filming Permit - Short Form**

Company Name: _____ Project/Client Name: _____
Address: _____ Type of Project: _____
City/State/Zip: _____ Producer: _____
Phone #: _____ Photographer/Director: _____
FAX #: _____ Set Contact: _____
Tax ID or Soc. Security #: _____ Local Contact: _____
Location Manager/Agent: _____ Local Phone #: _____
Phone/Beeper #: _____ Start Date: _____ End Date: _____

**Summary of Activities and Scene(s):** _____

_____

_____

**SCHEDULE BY LOCATION(S)** (Includes filming, parking and base camp):

| Date | Location | Start Time | End Time | Type of Activity (e.g., film, prep, or strike) |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Description of Equipment/Props: _____

_____

Max. Number of Cast and Crew: _____ Number/Type(s) of Vehicles: _____

Use of Roads and/or Trails? (Y/N): ____ Describe: _____

I hereby state that the above information given is complete and correct and that no false or misleading information or false statements have been given. All estimates are reliable to the best of my knowledge and I have the full authority to represent the applicant entity and the project described above.

Signature: _____ Print Name: _____ Date: _____

Title: _____ Company Name: _____

**INFORMATION PROVIDED WILL BE USED TO DETERMINE WHETHER A PERMIT WILL BE ISSUED. COMPLETED APPLICATION MUST BE ACCOMPANIED BY AN APPLICATION FEE IN THE FORM OF A CHECK OR MONEY ORDER IN THE AMOUNT OF $_____.00 MADE PAYABLE TO NATIONAL PARK SERVICE. APPLICATION AND ADMINISTRATIVE CHARGES ARE NON-REFUNDABLE.** *[Add park address information.]*

**Paperwork Reduction Act Statement:** This information is being collected to allow the park manager to make a valued judgement on whether or not to allow the requested use. All the applicable parts of the form must be completed.

**Estimated Burden Statement:** Public reporting burden for this form is estimated to average 30 minutes per response including the time it takes to read, review instructions and complete the form. Direct comments regarding this burden estimate or any aspects of this form to the National Park Service Program Manager, Special Park Uses, Ranger Activities Division, 1849 C Street, NW., Washington, D.C. 20240 and to the Information collection Clearance Officer, Washington Administrative Program Center, 1849 C Street, NW., Washington, D.C. 20240. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

(NPS Form 10-932) (OMB No. 1024-0026)
(NEW 12/99) (Expires 08/31/2001)

# UNITED STATES DEPARTMENT OF THE INTERIOR
# NATIONAL PARK SERVICE
# (NPS site and address)

## Application for Photography/Filming Permit - Long Form

**Date**

### GENERAL INFORMATION

Company Name
Address
City/State/Zip
Phone #
FAX #
Producer
Insurance Co.
Federal Tax No. or Social Security No.

Applicant/Agent
Address
City/State/Zip
Phone #
Beeper #
Photographer/Director
Name of Project/Client:

**Type of Project:**
☐ Stills, editorial ☐ Stills, advertising ☐ stills, other ☐ stock video/photo
☐ Feature Film /TV Movie ☐ TV Series/Pilot ☐ Documentary/Travelogue ☐ Commercial
☐ Music Video ☐ Public Service Announcement ☐ Infomercial ☐ Industrial
☐ Other, explain _____ Sound ☐ Yes ☐ No

**Summary of scene(s)**

### SITE INFORMATION:

Total number of days on site: _____ Shoot _____ Prep _____ Strike _____ Hold
Night work : ☐ No ☐ Yes, explain

SHOOTING SCHEDULE BY LOCATION:

| DATE | LOCATION | TIMES | FILM PREP STRIKE |
|---|---|---|---|
| | | | ☐ ☐ ☐ |
| | | | ☐ ☐ ☐ |
| | | | ☐ ☐ ☐ |
| | | | ☐ ☐ ☐ |

☐ Exteriors

☐ Interior: Building name _____ ☐ Other, explain

Set dressing or other structures proposed: ☐ No ☐ Yes, explain

**To request set construction, off-road activity, trail use, or interior use of building, attach detailed information including proposed Site Plan.**

Electrical needs, explain _____ Generator: ☐ No ☐ Yes, size _____Lighting: ☐ None ☐ Reflectors only ☐ Yes (explain)

Road: _____ Date/time: _____ ☐ Closure requested

☐ Running shots ☐ Driving shots ☐ Drive-bys ☐ Tow shots ☐ Drive-ups & Away ☐ Wet down road

☐ Camera/Equipment on Road Shoulder ☐ Camera/Equipment on median ☐ Other (explain)

## OPERATIONAL INFORMATION:

Personnel and Vehicles:

Total Cast & Crew _____ Personal Cars _____ Large Trucks _____ Other Trucks _____ Vans

Camera Car _____ Picture Cars _____ Motor homes _____ Dressing Rooms

Other Vehicles (explain)

Base Camp location

Catering Co. Name _____ Phone #

## SPECIAL ACTIVITIES:

Children: ☐ None ☐ Yes # of Children _____ Age Range

Animals: ☐ None ☐ Yes (explain)

Trainer Name: _____ Phone #

Aircraft: ☐ No ☐ Yes (explain)

Special Effects: (identify)

Effects Technician Name: _____ Phone #

License # (if applicable) _____ Permit # (if applicable)

Stunts: (explain)

Coordinator _____ Phone #

Any other unusual or hazardous activities, explain

Attach pages to provide additional information for permit consideration.

Person on location responsible for company's adherence to all terms & conditions of Film Permit:

Name:_____ Title: _____ Phone:

Person on location responsible for coordinating activities with the NPS:

Name: _____ Title: _____ Phone:

Person at the company office to contact for follow up information and billing:

Name: _____ Title: _____ Phone:

I hereby state that the above information given is complete and correct, and that no false or misleading information or false statements have been given. All estimates are reliable to the best of my knowledge and I have the full authority to represent the applicant/production company and the project described above.

**Signature** _____ **Title** _____ **Date** _____
**Company Name**

Information provided will be used to determine whether a permit will be issued. Completed application must be accompanied by an application fee in the form of a cashiers check or money order in the amount of $___.00 made payable to **National Park Service**. Application and administrative charges are non-refundable. *This completed application should be mailed to Park address information.*

**********

*The above application form is provided is provided with the understanding that parks will insert appropriate park names and addresses as desired. In addition, parks are encouraged to request (under separate sheets) any additional information needed to address specific park needs.*

*The applicant must sign and attach a disclaimer of authenticity of the information submitted.*

**Paperwork Reduction Act Statement:** This information is being collected to allow the park manager to make a valued judgement on whether or not to allow the requested use. All the applicable parks of the form must be completed.

**Estimated Burden Statement:** Public reporting burden for this form is estimated to average 60 minutes per response including the time it takes to read, review instructions and complete the form. Direct comments regarding this burden estimate or any aspects of this form to the National Park Service Program Manager, Special Park Uses, Ranger Activities Division, 1849 C Street, NW., Washington, D.C. 20240 and to the Information Collection Clearance Officer, Washington Administrative Program Center, 1849 C Street NW., Washington, D.C. 20240. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

## ADMINISTRATIVE RECORD CHECKLIST

**Permit # _____**

**DATE**

_____ Initial Contact

_____ Filming Application Mailed

_____ Filming Application and Fee Received

_____ Administrative and Management Cost Estimate

_____ Application Reviewed

_____ Decision Made

- ❑ No Permit Required
- ❑ Permit Denied
- ❑ Permit Issued

IF DECISION TO ISSUE PERMIT AGREED TO:

_____ FAA Waiver/Flight Manual

_____ Bond (Amount $_____)

_____ Insurance (Amount $_____)

_____ Any Other Special Requirements:

_____
_____
_____

_____ Permit Signed/issued to Permittee

Copy to:

- ❑ Dispatch
- ❑ On-Site Ranger
- ❑ Others
- ❑ Original to file

_____ Actual Cost Bill For Collection Completed and Sent

_____ Bill of Collection/Official Receipt Issued

_____ Bond Returned

_____ Log Completed

POST EVENT REVIEW NOTES:

## PERMIT INFORMATION SHEET

The application for filming/photography should be accompanied by an information sheet produced by the park. The information sheet stays with the potential applicant, while the application is filled out and returned to the park. Each park will develop its own information sheet, but each information sheet should contain at least the following elements:

Introduction and Policy Summary
Procedures for Requesting a Permit
Pre-Permit Conference
Location Scouting
Technical Scouting ("walk through")
Costs/Insurance/Bonds
Sharing the Park
Summary of Restrictions and Conditions
Closures
Prohibited Activities
Termination of the Permit

The following is an example of an application information sheet. Parks may customize the basic form by adjusting or expanding the numbered segments. The information sheet explains what is involved in filming/photography in the park. It is NOT intended to be a substitute for a permit. Suggestions on customizing the sample are included in italics.

- - - - - - - - - - - - - - - - - - - - - - - - - - -

FOR YOUR INFORMATION
FILMING/PHOTOGRAPHY AT
(*SITE SPECIFIC*) NATIONAL PARK

"The service...shall promote and regulate the use of ... national parks ... [its] purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (16 U.S.C. 1)

It is the policy of [*Site Specific]* National Park to allow filming and photography when and where possible, while adhering to this mandate. Therefore primary consideration will be given to potential resource damage and to anticipated disruption of normal public use.

The following guidelines are established by the superintendent of *[Site Specific]* National Park as they relate to filming and photographic activities within the park.

Generally, permits are not required for:

- Visitors using cameras and/or recording devices for their own personal use.

- Sound technicians, and film or video news crews at breaking news events. (Refer to the superintendent's Guide to Public Affairs for more information regarding news media.)

- NPS filming or photography, Department of the Interior Audiovisual Center filming or filming/photography done pursuant to a cooperative agreement or contract.

A request for a filming or photography permit may be denied if:

- in the opinion of the superintendent or his/her designee, the filming activity requested represents a potential for harm or impact on the park's natural, cultural, wilderness or recreational resources, may create health or safety risks, or disrupt visitor use and enjoyment;

- it is determined that supervisory requirements for the proposed project will place unreasonable burdens on park staff, regardless of the applicant's willingness to pay supervisory costs;

- the permittee fails to obtain insurance/bonding, or to agree to pay assessed cost recovery;

- the proposed filming or photography would conflict with the visitors' normal use of the park;

- the request includes entry into areas closed to the general visiting public, or which would allow activities not permitted to the average visitor.

Filming/Photography Permits - are issued for photography, filming, and associated sound recording to ensure protection of resources, to prevent significant disruption of normal visitor uses, or when they involve props, models , professional crews and casts or set dressings. Permits are required for access to areas normally closed to the visiting public.

To apply for a permit, complete the attached form and submit it to the *[Site Specific]* Permit Office allowing sufficient time for evaluation by the park staff before the start date for your activity in the park. Please remember to enclose your check or money order for $ ___.00 to cover non-refundable application costs. Your request will be evaluated on the basis of the information in your application. Therefore you are encouraged to attach maps, diagrams, script pages or storyboards to assist the park staff in evaluating your request. (Since NPS cannot censor content, submission of script and story-boards is voluntary.)

Most requests can be processed within _____ working days. Requests which involve multiple locations, complex logistics or coordination with other visitor activities will require a minimum of working days to process. Projects which require environmental or cultural resource evaluation must be submitted not less than _____ days before the start of proposed activities.

All costs of evaluating the request will be billed to the applicant, whether a permit is issued or not. In compliance with the requirements of the Debt Collection Improvement Act of 1996, the applicant must submit their social security number or Federal tax ID number when filling out the application for permit.

Conference/Site Scouting - will be scheduled with the park's permit coordinator and the potential permittee after the application has been received and reviewed. A visit to all potential filming sites in the park will usually be made at this time. By the end of the meeting, the permit coordinator should have enough information to prepare the permit once the project has been approved. (Each park will determine whether scouting every site is realistic, and will determine if the pre-permit conference can be conducted via telephone or must be on site.) The completed permit will detail the activities and locations to be authorized. Any activities not specified in the permit will not be allowed. No activities on NPS property may begin until the permit has been approved by the park and agreed to by the permittee.

Costs and Fees - Costs incurred by NPS in conjunction with accommodating the permitted activity will be reimbursed by the permittee. Administrative costs, and estimated costs for activities on site will be calculated and must be paid when the permit is approved. If any additional costs are incurred, the permittee will be billed at the conclusion of the permit.

The applicant or permittee is required to notify the NPS of any delays or schedule changes at least 36 hours in advance, or as agreed to by the superintendent. Should the applicant or permittee fail to provide such advance notification, the applicant or permittee is responsible for paying all costs incurred by the NPS anytime during the application, permitting, or operational process, including those due to cancellation, moving, or rescheduling of the project. Such payment will include but not be limited to a non-refundable charge for each staff person scheduled for the affected activity. Such charge will, at a minimum, be the equivalent of two hours overtime for each employee assigned. These costs may be recovered through the posting of a bond at the time of application, or through a bill for collection presented at any point after initial contact.

Any fees applicable will be determined on a case by case basis. The permittee will be advised of any such fees prior to receiving a permit.

Insurance and Bonding - General liability insurance must be carried by the permittee showing the U.S. Government, National Park Service, *[Site Specific]* National Park address as additionally insured. Short term policies must show coverage on "occurrence" basis. The minimum amount of commercial liability insurance is one million dollars. Additional amounts may be required for high risk activities.

Certain activities may trigger the need for the permittee to post a refundable damage bond. The amount of the bond will be equivalent to the estimated cost to NPS for clean up, repair or rehabilitation of resources or facilities that could potentially be impacted by the permit activities. At the con-

clusion of the permit, the bond will be returned to the permittee after costs of clean up, repair or rehabilitation are deducted.

Sharing the Park - A filming or photography permit does not allow the permittee to restrict park visitors from any location, therefore sites which attract a large number of visitors should be avoided. *[Adjust this recommendation as appropriate, i.e. avoid peak use hours]*. Normal visitor use patterns will not be interrupted for longer than five minutes, (or whatever is appropriate) and only as specified in the approved permit. Film/photography permit activities may not occur simultaneously with other permitted activities or unduly conflict with scheduled public activities. Visitors will be allowed to watch filming.

For more complex permit operations, or for activities which require coordination with other visitor use, and for those which are perceived to have the potential to impact park resources without proper supervision and care, at least one employee of the Park Service will be assigned to the film/photography crew. The permittee will be responsible for reimbursing the park for NPS monitoring. These costs will be included in the estimate of site use charges. Any additional costs will be recovered at the conclusion of the permit.

Restrictions and Conditions - will be enumerated in the permit. The following activities are restricted and must be approved on a case by case basis: 1) use of children or animals, 2) discharge of blank ammunition and all black powder weapons, 3) mechanical or pyrotechnic special effects, 4) stunts, 5) amplified music or sound, 6) placing of large set dressings, 7) filming photography inside interiors of government administrative work areas, 8) film equipment or activities on roadways, 9) access to closed areas or access to areas during non-visitor use hours. The permit will specify the number of people and the exact types of equipment allowed. Activities not specified in the permit will not be allowed by the NPS monitor on duty.

Please note that the permit does not include authority to film or photograph individuals. Model releases are the responsibility of the permittee.

Closures - Permit activities may be restricted based on weather or seasonal conditions (fire danger, standing water after rain, nesting season, etc.). Additional closures, use limits and/or restricted activities are listed in the superintendent's Compendium.

Prohibited Activities - Activities having the potential to damage or significantly impact or alter park resources are prohibited. The following are also prohibited: 1) altering, damaging or removing vegetation, 2) vehicle use off established roads and parking areas, 3) use of insecticides, herbicides and pesticides, 4) loud noises (60 decibels or higher) between 10:00 p.m. and 6:00 a.m., 5) smoking in buildings, on boardwalks or in vegetated areas, 6) use of fragile vegetation areas, except on trails or already disturbed areas (as determined by NPS), 7) flying aircraft below FAA recommended minimum altitude (usually 2,000 feet) or landing of aircraft except at designated landing sites 7) writing on or discoloring any natural feature or structure. *[ If the park has a park-specific law or regulation prohibiting nudity, for instance, add it.]*

Harassment of wildlife is prohibited by law. Filming of wildlife is permitted as long as there is NO disturbance, feeding, teasing, or manipulation of resident or free-roaming animals. Wildlife captured elsewhere may NOT be used in any in-park filming, whether trained or not.

Termination of Permit - All filming or photography permits issued by the National Park Service are "revocable" on 24 hours notice, or WITHOUT NOTICE if the terms of the permit are violated. Deliberate infractions of the terms of the filming permit or the deliberate making of false or misleading statements concerning intended actions in order to obtain a permit are causes for immediate termination of the permit and cause for possible prosecution. Permits will be revoked if damage to resources or facilities is threatened, of if there is a clear danger to public health or safety.

PERMIT CONDITIONS

When the filming/photography is of such a nature as to require supplementary managerial control than available in the pre-printed conditions on the back of the Special Use Permit form, additional conditions may be appended to the permit. The sample conditions that follow provide a model for permits of varying complexity. Conditions in bold are standard wording (boiler plate) suggested for most permits. All other language may be adjusted as required by the park. Comments in *[bracketed italics]* are included as ideas the park may expand on to assist in customizing their own conditions.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -
Special Use Permit
Special Park Conditions (continued)
GENERAL CONDITIONS

8) This permit may be terminated upon breach of any of the stated conditions.

9) This permit is made upon the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, or death to any person or damage to property of any kind whatsoever, whether to the person or property of the Permittee, its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this permit or occasioned by any occupancy or use of said premises or any activity carried on by the Permittee in connection herewith, and the Permittee hereby covenants and agrees to indemnify, defend, save and hold harmless the United States, its agents, and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.

(10) The permittee agrees to carry a general liability insurance policy against claims occasioned by the action or omissions of the permittee, its agents and employees in carrying out the activities and operations authorized by this permit. Such insurance shall be in the amount of ($ ), and the United States of America [*National Park Service, park name and address]* is named as additionally insured on that policy.

(11) The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of the Interior, The National Park Service, and all Federal, State, county and municipal laws, ordinances, or regulations which are applicable to the area of operations covered by this permit.

(12) This permit may be revoked at the discretion of the superintendent upon 24 hours notice, or without notice if damage to resources or facilities occurs or is threatened, notwithstanding any other term or condition of the permit to the contrary. Permittee will reimburse NPS for cleanup or repair of damages required to be made by NPS staff or contractor in conjunction with terminated permit.

(13) Permit is not transferable to another party.

(14) The permittee will be required to post a bond or cash deposit in the amount of $_____ to insure that the area is left in as good condition after completion of filming activities as it was before.

(15) Permittee will remit to the NPS $_____ for recovery of costs incurred by NPS in conjunction with this permit. If any additional costs are incurred during the course of this permit, the permittee will be billed for the balance at the conclusion of the permit.

16) The permittee agrees to notify the NPS of any delays or schedule changes at least 36 hours in advance. Should the permittee fail to provide such advance notification, the permittee agrees to pay any costs incurred by the NPS anytime during the application, permitting, or operational process, including those due to cancellation, moving, or rescheduling of the project. Such payment will include a non-refundable charge for each staff person scheduled for the affected activity. Such charge will, at a minimum, be the equivalent of two hours overtime for each employee assigned.

17) Credit must not state or imply National Park Service endorsement of commercial product.

OR

Credit will/will not be given to National Park Service.

Suggested format for credit line is :
*[Site Specific National Park]*
NATIONAL PARK SERVICE
U. S. DEPARTMENT OF THE INTERIOR

18) Permittee shall own all rights of every kind in and to all photographs and recordings made by it in the park and shall have the right to use such photographs and/or recordings in any manner it may desire without limitation or restriction of any kind. Permit does not grant any rights regarding the filming, photography or recording of individuals on National Park Service property. In addition, rights owned by other individuals or institutions are not impacted or changed by this permit.

MANAGEMENT OF PERMIT ACTIVITIES

19) The filming project will be well planned and scheduled. Last minute changes will not be accommodated unless the changes are contingent upon weather or other emergency conditions and approved by the NPS representative in charge.

20) A member of the park staff will/may (select the appropriate word) supervise the filming done within the park boundaries. He/She will have the authority to make all supervisory decisions to assure compliance with the permit, applicable regulations, and National Park Service filming policy.

Permittee must comply with any special instructions received from this representative. Any additional information relating to the privilege granted in this permit will be furnished upon request of the official in charge.

a. Any expenses incurred by NPS for such supervision will be borne by the permittee but may be waived at the superintendents discretion.

b. No employee of the National Park Service may work for the permittee in any capacity whatsoever while in uniform or if directly involved in supervision of the permittee.

c. NPS employees may not perform, or appear to perform official duties for purposes of filming unless such performance has been approved by the NPS.

d. No personal gratuity of any nature whatsoever will be offered to any employee of the Government in connection with the exercise of the privilege granted.

21) Filming in brush areas may be canceled during extreme fire or weather conditions. When filming is terminated, NPS lands must be vacated immediately. The remainder of the filming day may be made up at a later date. Use of arc lights may be prohibited during EXTREME or higher fire danger periods.

22) Vehicle access on unpaved roads may be restricted following rain to prevent damage to wet areas.

23) Government equipment cannot be loaned or rented or diverted from normal use for purposes of filming.

24) Quiet hours are from 10:00 p.m. to 6:00 a.m. Explosions, gunshots, or loud noises (exceeding 60 decibels) that would disturb residents or neighbors are prohibited.

25) This permit does not guarantee exclusive use of an area. The area will remain open to the public during park visiting hours. Permit activities will not unduly interfere with other park visitors use and enjoyment of the area. Visitors will be allowed to watch filming.

CONDITIONS FOR FILMING/PHOTOGRAPHY ACTIVITIES

26) This permit may be used between the hours of ___ and ___ on ___ or ___. No activity, including arrival of vehicles and/or personnel is permitted before or after designated hours. All personnel, equipment and vehicles must be clear of NPS property by ___. Extension may only be made in writing by contacting the Film Permit Coordinator.

27) Utmost care will be exercised to see that no natural, historic or cultural features are injured, and after completion of the work, as required by the official in charge, the area will either be cleaned up

and restored to its prior condition, or after clean-up, left in a condition satisfactory to the official in charge.

a. Permit activities may be conducted in *[identify all sites and types of activities (i.e. Wonderland Overlook parking lot for photography, Parking lot at Mile marker 5 for base camp, crew parking, etc.)]*

b. Furnishings, artifacts, and other historic objects may not be touched or moved, except by park staff. If the need to move any object is anticipated, special arrangements must be made in advance.

c. Conditions/prohibitions on attaching anything to NPS facilities, structures, rocks or vegetation, hanging signs or banners, prohibitions/restrictions on mylar or helium balloons.

d. Prohibition on digging, scraping, moving natural features.

e. Conditions/prohibitions on camouflage or removal of signs, fences, posts, etc.

f. Cutting of branches or ground cover is not permitted. Permittee may bring own greens and must remove them after shooting and dispose of them properly.

g. Photographing or filming of resident wildlife will be permitted only when such wildlife will not be molested, harmed, or disturbed thereby. Wildlife captured elsewhere will not be allowed in any filming whether trained or not.

h. Domestic animals may be used for filming/photography. List and describe use. When not working, animals will be restrained or confined. American Humane Association guidelines for use and supervision of animals will be followed by the permittee

i. Pets will be kept on leash and under control at all times.

j. Conditions/restrictions concerning fire, open combustion, candles, smoke-generating devices. Examples: Use of fire is restricted to propane fire ring operated by qualified (and licensed) pyrotechnics technician.

OR

If filming activity involves use of fire, combustible materials must be contained within fire pan, and all ashes and charcoal must be removed of and disposed of properly outside the park. Permittee will 0comply with any fire restrictions that may be in place at the time of permitted activities.

28) Permittee will comply with state laws, county ordinances, regulations, and industry practices concerning use and/or employment of minors. Identify age range and number of minors involved in the project.

CONDITIONS/RESTRICTIONS ON OPERATIONS

30) Filming permit will be kept on site at all times and will be held by _____ (name) who will act as liaison for the permittee. _____ (name) will have the full authority to make decisions and must remain on site at all times during the project. He/She will be responsible for all individuals, groups, vendors, and contractors, etc. involved with the permit activities.

31) All Permittee personnel will abide by industry recognized Code of Conduct. (Association of Independent Commercial Producers code or Alliance of Motion Picture and Television Producers code, or _____.

32) Smoking is prohibited inside buildings, on boardwalks and in vegetated areas. Permittee will provide butt cans for smoking in designated areas. All fire safety regulations will be complied with by the permittee.

33) Vehicle use - roads and parking areas to be used, warning signs and caution markers, speed limits, access routes, move-in and move-out times, road closures, time limit on holding traffic, coordination with other agencies having jurisdiction over roads through NPS property, Requirements for off-site parking/consideration of park neighbors.

34) Permittee will/will not be allowed to leave equipment or vehicles on site overnight. Permittee must provide own security; NPS employees should not be utilized as security personnel by permittee (superintendent's discretion).

35) Permittee's staff and security personnel will follow guidelines provided by NPS representative for dealing with park visitors. Permittee's staff will communicate with visitors in a courteous, knowledgeable and professional manner.

36) Identify electrical requirements, generator restrictions, cable safety, etc.

37) Identify what utilities, facilities the permittee must provide including restrooms, trash cans, etc.

38) First aid and personal safety are the responsibility of the permittee. Identify any specialized safety requirements including mountaineering, lifeguard, etc.

39) Trash and debris will be removed daily by the permittee. Areas of shooting must be cleared of all hazards each day or secured and attended by the permittee's security personnel.

a) Clean up of spills or accidents in accordance with 40 CFR and all applicable state environmental quality laws regarding disposal and clean up of hazardous/industrial wastes.

b) In case of spill or accident which may involve hazardous or industrial wastes, NPS representative must be notified immediately.

40) Permittee will clear shooting location of all equipment, props and set dressings, as well as trash and debris, returning the site to original condition within _____ hours/days after completion of shooting. Cleanup will be to the satisfaction of the superintendent.

41) Food and drink - designate location for meal service, restrictions on where food or beverage may or may not be consumed. Alcohol. Barbecue, cooking, clean up restrictions/conditions

42) Amplified sound conditions/restrictions including 10:00 p.m. to 6:00 a.m. limit of 60 decibels measured at 50 feet from the source of the sound.

SPECIAL CIRCUMSTANCES (Only applicable in special cases)

43) Aircraft examples:

- All filming operations involving use of aircraft will follow FAA Advisory Circular (91-36C) which encourages a minimum altitude of 2,000 feet above the highest landform to reduce any potential interference or impact on wildlife, visitor uses, sensitive natural or archeological sites or recreation use from low-flying aircraft.

- Landing of aircraft is restricted to designated landing sites only.

  OR

- Aircraft used in connection with filming activities allowed by this permit will comply with all applicable Federal Aviation Administration regulations and guidelines.

- Operations involving use of helicopters over persons at less than 500 feet above ground level (AGL) may require a Certificate of Waiver of FAR section 91.119(b) and (c). Permittee must provide NPS with a copy of the Waiver OR a written certification that consultation with FAA has occurred and a waiver is not necessary.

- The Office of Aircraft Services (OAS) also has established responsibilities, policies and procedures for the overall management of aviation matters (see Department Manual parts 19, and 350 to 354 and Special Federal Aviation Regulation 50-2. Aircraft AND pilot utilized to transport NPS representative during all activities associated with filming must hold current certification by the Office of Aircraft Services.

44) Use of special effects or pyrotechnics must be approved in advance by NPS and will be used under the direct supervision of properly licensed technician. Pyrotechnic technician will have permit for pyrotechnics available for inspection by NPS monitor. Identify materials or effects which are

approved and specific conditions/restrictions related to them such as submission of Materials Data Safety Sheets, clean up and removal of materials, etc.

45) Permittee will notify NPS in advance of any stunts to be performed. Reasonable safety precautions will be observed in the performance of stunts to protect park visitors, staff, park resources, structures and facilities. List activities which have been approved and any specific conditions related to them.

46) Areas rigged for pyrotechnics or stunts must be attended by properly trained personnel at all times and must be properly posted.

## SUGGESTED PARK SPECIFIC GUIDELINES

Listed below are suggested topics for consideration when writing a park specific filming guideline. Parks may change the order, or discard or add any subject as needed and/or at the discretion of the superintendent.

- **Superintendent's Statement**

- **Law, Regulation and Policy Summary**
  - enabling legislation and other park-specific laws
  - applicable state laws, regulations and licensing requirements
  - service policy
  - park management documents and Superintendent's compendium

- **Role and Function Statements**
  - who has responsibility for taking which actions
  - cooperation and interaction among divisions
  - expertise or personnel of cluster or regional personnel

- **Forms and Reporting Requirements**
  - application
  - SUP form and addendum
  - tracking and reporting activity and staff time

- **Cost Recovery**
  - basis for setting charges
  - SOP's for recovery and distribution of funds
  - expenditure documentation
  - end of year summary

- **Fee Calculation** (See Exhibit 9)

- **Procedures for Handling Routine Requests**
  - procedures
  - time frames
  - information sharing
  - staffing
  - record keeping

- **Procedures for Handling Complex Requests**
  - application requirements

  - time frames
  - inter-division review
  - conditions/restrictions in the permit
  - monitoring by resources management, maintenance, etc.
  - tracking and billing for staff time

- **Special Circumstances** (Interiors, Night filming, etc)
  - SOP's
  - involvement of other divisions/agencies
  - addressing potential impact to neighbors

- **Specific Conditions and Restrictions**
  - seasonal restrictions (nesting, peak visitor use, etc)
  - site specific restrictions

## GLOSSARY OF TERMS AND TITLES

The purpose of this Exhibit is to list the job titles and explain the responsibilities of the filming industry employees park personnel might encounter on location. This is not a complete list of people on the set. Some of the job titles are obvious, such as carpenter, plumber, plasterer, scene painter, gardener, driver, wrangler, etc. There are also people who appear only on a special occasion, such as choreographers, dialogue coaches and special advisors. There are also people connected with the actual business of production, such as production accounts, production secretary, etc.

### A. GENERAL TERMS

**Art Director**: The person responsible for designing all of the sets used in a motion picture.

**Assistant Camera Operators**: The people assisting with the camera, working directly for the cameraman. Duties include physical movement and setup of the camera, loading its magazines, cleaning the camera and its components. The 1st assistant is also called a "focus puller" and follows focus on the camera while actually filming.

**Assistant Directors (AD)**: The 1st AD is the right arm of the director, both in organizing the production and running the set. The 2nd AD is responsible for the call sheets, movement of extras, and basically making sure that everything is in the right place at the right time.

**Associate Producer**: Represents the producer's interest when the producer is not personally on the production scene. He may control finances during the location shooting. For a commercial, he may be the set contact.

**Boom Operator**: Sound person who positions the microphone, trying to keep it as close to the speaker as possible without getting it into the picture, or without casting a shadow that can be seen in the picture. The mike is actually mounted on the end of a fish pole or boom.

**Cameraman or Camera Operator**: The member of the crew who actually runs and maneuvers the camera.

**Clapper (or Slate or Mark)**: This person holds the clapboard or slate in front of the scene at the beginning of each shot. If a sound production, announces the scene number and brings the hinged portion of the clapper onto the slate with a sharp sound. This sound is synced up later with the picture.

**Craft Services**: Often provide assistance in keeping the set clean, providing coffee and snacks between meals, and other services that support the crew, but are not related to actual filming operation.

**Director**: Formulates and is responsible for the execution of the story requirements as set forth by the producer. Directs the efforts of the talent, the cameraman, the editor and the lab, plus all the rest of the production company.

In features, the Director has artistic control. In episodic television, the producer holds artistic control, hiring different directors for individual episodes. In commercials, the director must work within the framework of the storyboard created by the advertising agency.

**Director of Photography (DP)**: The person responsible for lighting the scene and setting up the shots. The members of the camera crew report to this position.

**Electrician**: Technician responsible for connecting lights to the proper power supplies. He/she receives instructions from the gaffer and the cameraman or the Director of Photography.

**Extras**: People who are seen in the filmed sequences of the picture, but in very minor roles without assigned lines of dialog. They are directed by the Assistant Director and not the Director.

**Gaffer (also Chief Juicer or Boss Electrician or Chief Electrician)**: This is a lighting electrician who is in charge of the lighting crew or juicers. He/she reports to the cameraman or Director of Photography.

**Greensman**: A set dresser specializing in organic materials such as trees, bushes and flowers.

**Grips**: Manual laborer possessing special skills germane to film production. Just about everything that is lifted or moved or built on a set is done by grips. They load and unload equipment, build camera platforms, dig holes for camera placement, push the dolly and move the set walls.

**Location Manager**: The person responsible for finding, selecting, and finalizing the locations needed for the script. Responsible for obtaining permits, traffic control, parking. Also is the liaison for the company to neighbors and monitor of clean up. Works for the Production Manager.

**Location Scout**: Independent contractor hired by a company to photograph potential locations and provide contact information to the company. Has NO authority to make commitments for the company.

**Lead**: (1) The principle actor or character in a picture such as the hero or heroine. (2) The person in charge of a small group of technicians on a special detail.

**Producer**: The producer can be an individual that provides financing for and the supervision of the production of motion pictures or television. The final authority for all matters relating to how funds are spent.

**Production Assistant (PA)**: A person working for the production manager, handling a variety of tasks. May be assigned to non-skilled tasks on the set such as preventing people from walking through a shot, or picking up litter. Frequently an entry level position.

**Production Coordinator**: The person who handles details for the producer. In commercials, may take the role of Location Manager.

**Production Manager**: In commercials, the executive in charge of all production arrangements, i.e. location contacts, negotiations and shooting schedules. Authorizes payment of bills. (See Unit Production Manager.)

**Property Man**: Person responsible for all the objects on the set that are handled by cast.

**Property Master**: Property Man and certified/licensed controller of all weapons.

**Recordist (Sound)**: Person in charge of operating the sound recorder. Places the mike, strings cable and sets the controls of the recording equipment.

**Script Supervisor (Continuity)**: Technician who times the actual filming and keeps notes on each scene and take to insure continuity of action and provides the vital information for editors.

**Set Decorator**: Person responsible for furnishings and draperies to create the appropriate ambiance on the set.

**Set Dresser**: Technician working for the Set Decorator. Places furnishings, hangs draperies and arranges objects used to dress the set (not handled by the cast).

**Sound Engineer**: The technician responsible for the operation and maintenance of the sound equipment.

**Stunt Coordinator**: Person who plans and supervises those who execute activities involving an element of risk. Arranges for safety relating to stunts and choreographs the action. Acts as an advisor to the director.

**Talent**: The performers in front of the camera.

**Transportation Coordinator**: supervises the Transportation Captain and Teamsters and manages all vehicles, parking, portable toilets and removal of trash.

**Unit Production Manager (UPM)**: One who handles much of the business associated with film or television production, and makes arrangements for food, lodging, transportation, location work. He keeps budget and expenditure records, authorizes payment of bills.

## B. TERMS AND ITEMS ASSOCIATED WITH FILMING OR PHOTOGRAPHY ON LOCATION

**Angle of View**: The amount of a scene that is taken in by the lens, usually expressed in degrees.

**Apple Box**: Wooden box in one of three basic sizes (full, half and quarter) used on the set in a variety of ways - to raise actors, furniture, lights, etc.

**Base Camp**: Staging area for equipment and large vehicles when filming in a variety of locations, or when parking adjacent to the filming location is not possible. Base camp can also be the site of activities not directly related to filming such as dressing area and meal service.

**Blackout Cloth**: Heavy, densely woven cloth use to cover windows and doors to facilitate day for night filming.

**Boom Mike**: Sound dolly with a long extendable are enabling the operator to position the microphone and move it silently around the set following the actors.

**Butterfly**: Net that can be stretched over an outdoor scene to soften sunlight.

**Camera Car**: Vehicle that is outfitted to accommodate camera equipment and key personnel, for filming sequences on the road. Can also be used to tow vehicle being filmed.

**Camera Left**: The left side of the camera as the cameraman stands looking toward the action to be photographed. Camera right means the right side of the camera as the cameraman looks toward the action.

**Century Stand (also C Stand)**: A metal stand for positioning a lighting accessory such as a flag, cookie, scrim, etc.

**Cinemobile**: A large, self-contained equipment truck.

**Clapper (see also Slate)**: Two short boards hinged together and painted in a matching design. When sharply closed, they provide an audible and visual cue that is recorded simultaneously on film and sound tape. This helps to synchronize the film and sound during editing. A slate with relevant information, such as the scene and take number, is usually attached to the clapperboard.

**Cookie (also called Kukaloris or Cucaloris)**: An irregularly perforated shadow-forming flag, opaque or translucent, made of plywood, plastic, etc. Used to create shadow textures.

**Crab Dolly**: Camera perambulator that eliminates the use of metal tracks and permits the camera to be moved in any horizontal direction. Vertical movement is approximately five feet.

**Crane**: A large camera-mounting vehicle with a rotating and high rising arm, operated electrically or manually.

**Credit Line**: The acknowledgments at the end of a film the lists the cast, crew and other production information including the locations used.

**Dailies(also called Rushes)**: The first print from original footage, with or without synchronized sound tracks, delivered from the lab daily during the shooting period, for viewing by the director, cameraman, etc. If possible, sets are not struck until dailies have been viewed.

**Day for Night**: Shooting film in the daytime, in such a manner that it gives the illusion of night.

**Dolly**: A wheeled vehicle for mounting a camera and accommodating a camera operator and assistant. Often equipped with a boom on which the camera is mounted.

**Dolly Track**: Parallel metal tracks laid on the ground to allow a dolly to move smoothly over rough or uneven surface or ground.

**Editorial**: Still photography involving models or products that are intended to accompany articles in a magazine, rather than print advertisement.

**ENG Crew (Electronic News Gathering)**: A small team, usually of fewer than five people, with a self-contained vehicle equipped with videotape, editing and broadcast capability. Usually associated with daily news broadcasts.

**Establishing Shot (also Master Shot)**: A shot, usually close to the beginning of a scene, that establishes the components of the scene in the viewer's mind.

**Exterior**: Any scene shout out of doors.

**Fill Light**: The light that is used to fill in shadow area of a subject, allowing for detail to be seen in those areas.

**First Unit**: Principal people on the set, including the director and actors, for filming dialogue and other scenes requiring the actors.

**Fishpole**: A long, lightweight, hand-held rod on which a microphone can be mounted in situations where the boom is not practical.

**Flag**: Shadow-casting device made of plywood, or cloth stretched on a metal frame. Specific types of flags include cutter, finger, gobo and target.

**Flat**: A section of a studio set, usually modular, 8 to 10 feet high and 6 inches to 12 feet wide. Constructed of materials such as plywood, fireproof hessian, etc. Surface treatment varies from paints to wallpapers, papier-mâché, fabric, metals, etc.

**Follow Shot**: shot in which the camera is moved to follow the action.

**FX or EFX**: abbreviation for "effects" such as sound effects or special visual effects.

**Gaffers Tape**: Wide adhesive tape used for securing lighting instruments, stands, cable, etc. on the set. Highly desirable by the crew, but often discarded as litter.

**Greens**: Plant material used in dressing the sets or landscapes.

**Gobo**: A black wooden, metal or cloth screen used on a stand or a clamp to protect the lens from strong light which could cause a flare in the lens. (Sometimes “cookie.”)

**Golden Light**: Term referring to the warm light which naturally occurs shortly before and after sunset or sunrise.

**Hero**: Term used in commercials to refer to camera ready version of the product being advertised.

**Hold**: Term referring to a work day when a production company has permission to be in a location, but does not schedule any activity to occur.

**Honey Wagon**: Jargon for portable dressing rooms with bathroom facilities.

**I M O**: Camera positioned in such a way as to isolate motion during an action sequence. Often camera is set at high speed to slow down the action. During filming, the camera is unattended and often the action occurs close to the camera itself.

**Insert**: A shot added to explain the action, e.g. a close-up of a letter, newspaper headline, gun, etc.

**I T C**: Intermittent traffic control. Involves holding traffic on a road in one or both directions for a period of time, generally not to exceed three minutes for filming.

**Location**: Any place away from the studio used as a background for filming.

**MOS**: Filming without sound. Humorous coinage from the early days of cinema when immigrant German technicians spoke of shooting "mit out sound."

**Muscolight**: Brand name for a large truck with a telescoping arm which supports an array of powerful lights, intended to illuminate a large area.

**Night for Day**: Shooting during darkness, but intended to simulate daylight.

**Pan**: Camera pivotal movement in a horizontal plane. Sometimes used when describing pivotal camera movement in other planes.

**Parallels**: Metal scaffolding erected to provide elevated camera or lighting position.

**Permit Service**: An independent agent hired by a production company to complete permitting requirements including application, payment and pickup of required permits and business licenses, notification of police and fire departments.

**Picture Car**: Any vehicle to be used in front of the camera.

**P O V**: (point of view) usually the camera position that simulates a view as seen by the actor

**Post Production**: All the processes that occur after the film has been shot and developed. Editing, titling, mixing are all facets of post production.

**Prep Day**: Work day preceding filming. Can include set construction or dressing, or rigging for stunts or special effects.

**Props**: (Properties) Moveable objects on the set normally handled by actors.

**Reverse**: What is seen opposite the location or set being shot; shot taken of what is behind the camera, or immediately adjacent to it in the establishing shot.

**Run-by**: Shot taken from a camera position on the side of the road filming a vehicle driving by.

**Running Shot**: Moving, vehicle-to-vehicle filming from camera mounted on a camera car, moving with the vehicle being filmed ("picture car").

**Scrims**: Diffusion material placed in front of lights to soften the effect.

**Second Unit**: Filming done without the primary actors or director. Usually without sound. Can include inserts, stunts or run-bys.

**Shiny Boards**: Reflectorized metal boards used to reduce the difference between light and shaded areas by bouncing sunlight into the darker areas.

**Slate**: The numbered board held in front of the camera before a take; used to identify the film in the laboratory and cutting room.

**Slow Motion**: Film shot at a greater frames per second rate than the rate at which it will be projected, which slows down the motion.

**Sound Cart**: The wheeled cabinet on which sound recording equipment is placed to allow easy movement around the set.

**Special Effects**: The name given to almost any unusual effect to create an illusion on film. Can be optical, mechanical, or pyrotechnic.

**Strike**: Remove set dressings, dismantle set and remove equipment from a filming location.

**Story Board**: A series of drawings used as visual representations of the shooting script. Sketches representing key situations shots) in the scripted scenes. Dialogue or indication of music, effects, etc. that appear below the pictures.

**Swing Gang**: A team of grips assigned to strike and clean up after filming. Although these grips are assigned to the Art Department, they are not the same people who prepared the area for filming.

**Sync**: When the image coincides intentionally with a given sound.

**Take**: A scene or part of a scene recorded on film and/or sound tape from each start to each stop of a camera and/or recorder. Each shot may be repeated in several takes, until a satisfactory result is achieved.

**Tow Shot**: The vehicle being filmed is actually towed by a truck (often the camera car). This is generally required when filming dialogue between the driver and a passenger. Often the camera is mounted on the hood of the picture car, or on a door (side mount). Side mounts may widen the overall width of the vehicle to exceed the width of a single lane of traffic. Traffic control is usually needed to help the vehicle safely through traffic.

**Wet Down**: Intentionally spraying water on a road or other surface to create a visual effect for filming or to minimize dust.

**Wild Track**: Sound recording such as sound effect or ambient noise not synchronized with film image.

**XLS**: Extreme Long Shot. Distant landscape or vast interior shot in which human figures appear relatively small.

**Zoom**: The magnification of a certain area of the frame by bringing it optically to the full size of the screen and excluding the rest of the frame in the process.

# LOCATION FEES

**This Exhibit reserved for a description of authority, policy and procedures associated with Location Fees (upon passage of existing legislation authorizing the collection of these fees by the NPS).**

# APPENDIX 14
# EXPIRED RESERVATIONS OF USE AND OCCUPANCY

It is generally the intention of the National Park Service (NPS), when it purchases property, to remove any encumbering structures and restore the site to as close to original condition as possible. This Appendix addresses what the NPS can do when we acquire real property on which the previous owner reserved a term of use and occupancy, that term has or is about to expire, and the occupant requests to extend occupancy. Although park managers may not extend use and occupancy reservations, they may either: (1) issue a lease (see Director's Order #38: Property Leasing), or, under limited circumstances, (2) issue a SUP for temporary residency in an NPS structure at market rental rate. This Appendix will only discuss the second instance, temporary occupancy through use of a SUP.

## RETAINED USE AND OCCUPANCY

Many parks contain properties that have been acquired by the United States subject to retained term estates (also known as term retention's) or life estates. Term estates are authorized by the individual park areas enabling act, as are life estates, and can be for a period of 1 to 30 years. Since the 1960s, laws establishing parks have tended to require the NPS to provide landowners with the opportunity to retain a term or life estate in the property they sell to the government. The term retention allows former owners to occupy the sold property for a fixed number of years. Under these laws the seller is typically allowed to determine the length of the retained term at the time of the sale. The purchase price is decreased by one percent of the value of the purchase price for each year of occupancy.

Frequently, holders of retained terms request that their estates be extended as they near expiration. **These terms cannot be extended.** As a contractual condition of the conveyance of the property, once the retained use and occupancy has expired, the contract is fulfilled and no alteration or extension can be allowed.

In addition, the Uniform Relocation Act, Public Law 91-646, provides qualified sellers with relocation benefits upon the expiration of their retained interest. These benefits must be fully resolved at the end of the term retention.

## THE SPECIAL USE PERMIT

Park managers may issue a special use permit to allow rental of a NPS structure for temporary residential purposes, however, no interest in land is transferred. The fee for the permit must be based upon comparable prices in the local market (fair market value). In addition, the permittee shall reimburse the park for all costs associated with issuing and managing the permit. (See Chapter 10) The term of the SUP will not exceed two years. Park managers may issue SUPs for the temporary occupancy of a structure provided a determination has been made that:

- it is in the best interest of the park and the United States.

- the use will not result in a derogation of resources, values, and purposes for which the park was established; and
- One or more of the following criteria are met:
  - Specific legislative authority exists to allow temporary residency;
  - The NPS is unable to remove the structure for a significant period of time;
  - The structure has or may have historic significance that would be endangered if it were vacated;
  - Extreme environmental conditions temporarily prevent the occupant from vacating the structure; or
  - Termination of the residency would create an undue hardship on the occupant and the structure has served as the occupant's primary residence.

The manager's determination to issue the permit must be based on the specific legislative mandate for the park, and the general legislative mandate in the NPS Organic Act, 16 U.S.C. 1 and 2 to 4. These legislative mandates require the manager to consider a variety of issues before approving a SUP. The manager must consider the impact to the resource of continued occupancy and take into account that upon expiration of the term estate, the structure is the unencumbered property of the government, and is thus no longer subject to a property interest held by any specific individual. The manager must consider the best interests of the public and the park; also take into consideration any special circumstances (i.e. hardship) of specific individuals. Unless addressed otherwise by specific legislation, the authorization of a use and occupancy under a SUP is precluded as a matter of law if it would be in derogation of the resources, values, or purposes for which the park was established.

## AUTHORITY FOR ISSUING SUPS

The legislative authority for most SUPs is implied from the NPS *Organic Act* (16 U.S.C. 1 and 2 to 4), which requires the Secretary of the Interior to manage and administer units of the National Park System, and the enabling acts for individual park areas.

## CRITERIA FOR ISSUANCE OF SPECIAL USE PERMITS FOR TEMPORARY OCCUPANCY

### 1) Where the structure cannot be removed for a significant time period:

As a result of funding limitations, or the need to complete necessary compliance requirements, i.e., general management plan, land use plans, environmental and historic compliance documents, and environmental remedial actions, such as asbestos abatement, can significantly delay the removal of a structure. For these reasons, managers may seek to keep a structure occupied that they believe

would become either an attractive nuisance, a safety hazard, or present a security concern if left vacant. SUPs issued under these circumstances are terminated when funding becomes available or the compliance issues are otherwise resolved.

- In those instances where a structure acquired by the NPS is occupied, and the appropriate determinations have been made by the manager, a SUP may be issued. When issuing the permit, the NPS can use standard procedures for issuance to the current occupant, or develop procedures to issue the permit on a competitive basis.

- In those instances where a structure is unoccupied, and the appropriate determinations have been made by the manager, the park may issue a SUP. When issuing the permit, the NPS can use the standard procedures for issuance, or develop procedures to issue the permit on a competitive basis.

- Certain parks administer retained use and occupancy for private residential occupants inherited as a result of an administrative transfer from another agency. Upon expiration of the original agreement, the manager will make the appropriate determination whether a SUP may be issued.

**2) Where the structure has or may have historic significance that would be endangered if it were vacated:**

The historic significance of a structure may be unknown at the time it is vacated. Park managers may issue SUPs for the occupancy of a structure in order to maintain the status quo until the significance of the structure is determined. SUPs issued in these situations are often later replaced by other authorizations, such as historic leases, that provide a more permanent protection for the structure.

- In those instances where a structure is occupied and the appropriate determinations have been made by the manager, a SUP may be issued to that occupant.

- Where a structure is unoccupied, and the appropriate determinations have been made by the manager, the park may use standard procedures to issue a SUP or develop procedures to issue the permit on a competitive basis.

**3) Where extreme environmental conditions temporarily prevent the present occupant from vacating the structure:**

In cases where extreme inclement weather may prevent an occupant from vacating a structure, park managers may authorize occupants extra time to remove their property and vacate the structure.

**4) Legislative:**

Some parks have specific legislative authority to issue SUPs for residential purposes.

**5) Hardship:**

Each individual in this situation must be the former owner of the structure, and the structure must be their only residence. The overwhelming majority of hardship cases involve elderly individuals who have difficulty finding alternative housing. Others include those with medical or financial hardships. SUPs issued to individuals in the hardship category are issued and renewed with the understanding that they are valid only for the duration of the hardship, and only if the individual remains in the residence.

## FEES/COSTS

The park will charge a fee for the use of the facility, resource or property based upon comparable prices in the local market (Fair Market Value). Moneys received from such fees will be deposited to the general fund of the Treasury. Permittees receiving a SUP issued for use and occupancy under any of the five situations listed above, will be responsible for all costs involved in the issuance and administration of that Permit. Such costs may include personnel time, inspections, material expended, maintenance, upkeep and/or rehabilitation if such tasks are done by the park, appraisals as needed, and other management costs. Funds received as reimbursement of such costs shall be retained in the park, deposited to PWE 318, and used to reimburse the costs to the NPS associated with administering the program. Such costs will comply with the criteria and procedures listed in Chapter 10, MANAGEMENT OF PERMIT FEES.

## REQUIRED CONDITIONS

The following conditions will be included in all use and occupancy permits described under this Appendix. They are offered here in no particular order.

- Rights of the United States: Except as may be otherwise provided herein, the issuance of this permit does not constitute a transfer or conveyance by the United States of any right, title, or interest in the lands or structures covered by this permit.

- Sublet: The Permittee will not be allowed to sublet the property.

- Insurance: The Permittee will be required to carry adequate liability insurance coverage with the United States named as additionally insured. The amount of adequate coverage will be determined by the NPS. The park may require property insurance. (See Chapter 9)

- Damage deposit: The park will require a damage deposit (performance bond).

- Taxes: The permittee is required to pay all taxes validly assessed.

- Utilities: The permittee is required to pay all utility charges arising out of the use and occupancy of NPS property.

- Maintenance: Permittee shall keep the grounds of the premises in a clean and neat condition and shall maintain all structures and improvements in good repair. Permittee is responsible for all costs arising out of the premises, including all costs of maintenance. The United States has no responsibility for any charges or expenses in connection with the premises.

- Storage of property (boats, old cars, etc.): Storage of items on or in the NPS use and occupancy property must be addressed as a condition of the permit specifying where and/or when, or denying such use.

- Access: Concerns access to the property, and may include who, when, where, how, and how many. All could be stated in a simple condition.

- Inspections: Permittee agrees to allow for reasonable access by the National Park Service to the structures and grounds for the purpose of safety, health, or other inspections.

- Proper uses of the property: The park should write a condition specifying prohibitions and other restrictions on use of the property.

- Termination/Cancellation: The park should write a condition specifying what circumstances the permit would be terminated or canceled.

- Hold Harmless Clause: Every permit written by the Service will include a Hold Harmless condition. You will find a couple of versions of WASO Solicitor approved language for this condition in Chapter 9.

## GENERAL CONSIDERATIONS

There are many other considerations that could be added for a use and occupancy permit, depending upon the individual park. Here are some ideas, again in no particular order:

- Preservation (rebuilt), (wear and tear), (improvements, additions to the structure)

- Precautions

- Rights of the United States

- Vacation of property

- Waiver of moving and related expenses

## SUMMARY

A Special Use Permit for residential use should not be utilized where it would compromise (impair or be in derogation of) resources, values or purposes for which the park was established, or where it would impede accomplishment of park management goals. If such a permit is issued, the term would not exceed two years, and the fee must be based on the current local market price (fair market value) of the property.

# APPENDIX 15

## SPECIAL CONSIDERATIONS FOR NPS UNITS IN ALASKA

### GENERAL

This Special Park Uses Reference Manual (RM-53) is generally applicable to national park units in Alaska. However, in addition to the statutory authorities, regulations, cost recovery and policy directives discussed in this Handbook, park managers must be familiar with the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). ANILCA authorizes uses and requires procedures that must be considered when processing requests for special park uses and rights-of-way in Alaska. See Titles I-II, VI-IX, XI and XIII of ANILCA (16 U.S.C. 3101 et seq.) and implementing regulations at 36 CFR Part 13 and 43 CFR Part 36. NPS managers in Alaska must also note that, in addition to compliance with NEPA and NHPA, any action to permit the use of public land will require an evaluation of the effect of subsistence uses pursuant to section 810 of ANILCA.

### TRANSPORTATION OR UTILITY SYSTEMS

Title XI of ANILCA requires a specific process for application, review, and approval of any transportation or utility system (TUS) in Alaska national park units. Applications are required on a Standard Form SF 299 and timeliness are provided for both applicants and the NPS. Title XI did not provide the NPS any additional authority to approve TUS. Therefore, approval of a TUS in Alaska is generally a privilege, not a right, just as it is elsewhere in the National Park System.

For TUS requests where the NPS has applicable law (e.g., 16 U.S.C. § 5 and § 79, or specific park legislation) and the proposed TUS would not cross designated Wilderness, approval or disapproval is at the discretion of the NPS. When the NPS has no applicable law (e.g., oil or gas pipelines, railroads) or the proposed TUS would cross designated Wilderness, the NPS must submit recommendations to the President, and final approval would require a Congressional resolution.

Federal Aid Highways are TUS by definition [ANILCA § 1102(4)(B)(vii)]. Therefore, in Alaska, both the NPS and the Federal Highway Administration must meet the requirements of Title XI of ANILCA before approving any "4(f)" determinations or Federal Aid Highway grants pursuant to 23 U.S.C. § 317.

### ACCESS TO INHOLDINGS

Section 1110(b) of ANILCA requires the Secretary to give inholders such rights as may be necessary to assure adequate and feasible access for economic and other purposes, subject to reasonable regulation to protect the natural and other values of Alaska national park units. Under Department of the Interior regulations (43 CFR 36.10), inholders must apply for a right-of-way permit using a SF-299 or mining plan of operation in order to receive access rights. Hypothetically,

this section of ANILCA could be used to authorize a wide range of access to nonfederal land interests within park unit boundaries such as: use of off-road vehicles to reach remote residences on private land; construction of roads or airstrips to reach State land leased to commercial interest; installation and operation of oil and gas pipelines to reach Native corporation subsurface mineral rights.

## SPECIAL ACCESS

Section 1110(a) of ANILCA authorizes the use of snow machines (during periods of adequate snow cover or frozen river conditions), motorboats, airplanes, and non-motorized surface transportation methods for traditional activities (where such activities are permitted by law) and for travel to and from villages and homesites. In effect, national park units in Alaska are open to snow machine, motorboat, airplane, and non-motorized surface transportation methods unless specifically prohibited pursuant to procedures outlined in 43 C.F.R. § 36.11(h).

## TEMPORARY ACCESS

Section 1111 of ANILCA authorizes temporary access across Alaska national park units if necessary for survey, geophysical, exploratory, or other temporary use of non-Federal land, and if such access would not result in permanent harm to unit resources. 43 C.F.R. § 36.12 states that requests for temporary access shall be processed as access to inholdings or special access when appropriate.

## SPECIAL CONSIDERATIONS

NPS managers in Alaska must be familiar with 43 CFR Part 36, 36 CFR Part 13 and all applicable titles of ANILCA. Alaska specific law and regulations must be carefully considered before applying the Special Park Uses Handbook in Alaska.

References

16 U.S.C. 5
16 U.S.C. 79
23 U.S.C. 317
36 CFR Part 13
43 CFR Part 36
ANILCA Title XI

(NPS Form 10-930)
(NEW 10/00)

(OMB No. 1024-0026)
(Expires 12/31/2006)

# National Park Service
# (NPS site name)
# (Address)
# Application for Special Use Permit

Please supply the information requested below. **Attach additional sheets, if necessary, to provide required information**. Allow at least four (4) business days for processing. A non-refundable processing fee may be required to accompany this application unless the requested use is an exercise of a First Amendment right. You will be notified of the disposition of the application and the necessary steps to secure your final permit. (Note: there may be additional fees charged, and you **may** be required to provide proof of liability insurance.)

| | |
|---|---|
| Applicant Name: | Organization Name: |
| Social Security #: | Tax ID # |
| Street/Address: | Street/Address: |
| City/State/Zip Code: | City/State/Zip Code: |
| Telephone #: | Telephone #: |
| Cell phone #: | Cell phone #: |
| Fax #: | Fax#: |

Description of Proposed Activity (attach diagram):

Requested Location: _____

Date (s): _____

| Event set up will begin | Event will begin | Event will end | Removal will be done: |
|---|---|---|---|
| | | | |

Maximum Number of Participants _____ (Please provide best estimate)

Maximum Number of Vehicles _____(attach parking plan)

Support Equipment (list all equipment) _____

Support Personnel (contractors, etc. including addresses and telephones) _____

Individual in charge of event on site (include address, telephone and cell phone numbers): _____

| | | |
|---|---|---|
| Is this an exercise of First Amendment Rights? | Y | N |
| Are you familiar with/ have you visited the requested area? | Y | N |
| Do you plan to advertise or issue a press release? | Y | N |
| Will you distribute printed material? | Y | N |
| Is there any reason to believe there will be attempts to disrupt, protest or prevent your event?(if yes explain on separate sheet) | Y | N |

The applicant by his or her signature certifies that all the information given is complete and correct, and that no false or misleading information or false statements have been given.

Signature _____ Date _____

Information provided will be used to determine whether a permit will be issued. Completed application must be accompanied by an application fee in the form of a cashiers check or money order in the amount of $___.00 made payable to **National Park Service**. Application and administrative charges are non-refundable. *This completed application should be mailed to Park address information.*

**Note** that this is an application only, and does not serve as permission to conduct a filming project or any other use of the park. If your request is approved, a permit containing applicable conditions and regulations will be sent to the person designated on the application. The permit must be signed and returned to the park prior to the event.

**********

*The above application form is provided with the understanding that parks will insert appropriate park names and addresses and the amount of the application fee as desired.*

**Paperwork Reduction Act Statement:** This information is being collected to allow the park manager to make a value judgment on whether or not to allow the requested use. All the applicable parts of the form must be completed. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Estimated Burden Statement:** Public reporting burden for this form is estimated to average 30 minutes per response including the time it takes to read, gather and maintain data, review instructions and complete the form. Direct comments regarding this burden estimate or any aspects of this form to the National Park Service, Special Park Uses Program Manager, 1849 C Street NW (2460), Washington, D.C. 20240

(NPS Form 10-931)
(NEW 10/00)

# NATIONAL PARK SERVICE
## (NPS Site Name)
## (Address)
## Application for Photography/Filming Permit

(OMB No. 1024-0026)
(Expires 12/31/2006)

Please supply the information requested below. This information is required to evaluate your permit request. **Attach additional sheets, if necessary**. Allow at least four (4) business days for processing. A non-refundable processing fee may be required to accompany this application. There may be additional fees charged, including a location fee, and you **may** be required to provide proof of liability insurance.

| | |
|---|---|
| Applicant: | Company: |
| Social Security #: | Tax ID #: |
| Street/Address: | Street/Address: |
| City/State/Zip Code: | City/State/Zip Code: |
| Telephone #: | Telephone #: |
| Cell phone #: | Cell phone #: |
| Fax #: | Fax #: |
| Email: | Email: |

| | |
|---|---|
| Project name: | Producer: |
| Type of project: | Photographer: |
| Location manager: | Director: |
| Telephone #: | Caterer: |
| Cell phone #: | Telephone # - set: |

Summary of Activities and Scene(s): _____

_____

_____

**SCHEDULE BY LOCATION(S)** (Includes filming, parking and base camp):

| Date | Location | Start Time | End Time | Type of Activity (e.g., film, prep, or strike) | Number of Cast & Crew |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |

Maximum Number of Participants _____ (Please provide best estimate)

Description of Equipment/Props: _____

_____

Attach list of vehicles including type and license plate number. _____

Use of Roads and/or Trails? (Y/N): ____ Describe: _____

I hereby state that the above information given is complete and correct and that no false or misleading information or false statements have been given. All estimates are reliable to the best of my knowledge and I have the full authority to represent the applicant entity and the project described above.

Signature: _____ Print Name: _____ Date: _____

Title: _____ Company Name: _____

Information provided will be used to determine whether a permit will be issued. Completed application must be accompanied by an application fee in the form of a cashiers check or money order in the amount of $___.00 made payable to **National Park Service**. Application and administrative charges are non-refundable. *This completed application should be mailed to Park address information.*

**Note** that this is an application only, and does not serve as permission to conduct a filming project or any other use of the park. If your request is approved, a permit containing applicable conditions and regulations will be sent to the person designated on the application. The permit must be signed and returned to the park prior to the event.

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(NPS Form 10-932)
(NEW 10/00)

(OMB No. 1024-0026)
(Expires 12/31/2006)

# NATIONAL PARK SERVICE
## (NPS site name)
## (Address)
## Application for Photography/Filming Permit

Please supply the information requested below. This information is required to evaluate your permit request. **Attach additional sheets, if necessary.** Allow at least four (4) business days for processing. A non-refundable processing fee may be required to accompany this application. There may be additional fees charged, including a location fee, and you will be required to provide proof of liability insurance.

| | |
|---|---|
| Applicant: | Company: |
| Social Security #: | Tax ID #: |
| Street/Address: | Street/Address: |
| City/State/Zip Code: | City/State/Zip Code: |
| Telephone #: | Telephone #: |
| Cell phone #: | Cell phone #: |
| Fax #: | Fax #: |
| Email: | Email: |

| | |
|---|---|
| Project name: | Producer: |
| Type of project: | Photographer: |
| Location manager: | Director: |
| Telephone #: | Insurance company: |
| Cell phone #: | |

**TYPE OF PROJECT:**

☐ Stills, editorial ☐ Stills, advertising ☐ stills, other ☐ stock photo/video/film

☐ Feature Film /TV Movie ☐ TV Series/Pilot ☐ Documentary/Travelogue ☐ Commercial

☐ Music Video ☐ Public Service Announcement ☐ Infomercial ☐ Industrial

☐ Other, explain_____

Will there be sound recording ☐ Yes ☐ No Night work : ☐ No ☐ Yes, explain

**SUMMARY OF SCENE(S):**

**SHOOTING SCHEDULE BY LOCATION:**

| DATE | LOCATION | Start Time | End Time | Interior or Exterior | FILM | PREP | STRIKE | # of cast & crew |
|---|---|---|---|---|---|---|---|---|
| | | | | | ☐ | ☐ | ☐ | |
| | | | | | ☐ | ☐ | ☐ | |
| | | | | | ☐ | ☐ | ☐ | |
| | | | | | ☐ | ☐ | ☐ | |

Set dressing or other structures proposed: ☐ No ☐ Yes, explain

**ATTACH ADDITIONAL PAGES FOR INFORMATION NEEDED TO EVALUATE YOUR PERMIT REQUEST INCLUDING: set construction, parking, sanitary facilities, crowd control, emergency medical plan, off-road activity, trail use, or use of any building and site clean up. Include a proposed Site Plan(s).**

Electrical needs, explain _____ Generator: ☐ No ☐ Yes, size _____

Lighting: ☐ None ☐ Reflectors only ☐ Yes (explain)

Road: _____ Date/time: _____ ☐ Closure requested

☐ Running shots ☐ Driving shots ☐ Drive-bys ☐ Tow shots ☐ Drive-ups & Away ☐ Wet down road

☐ Camera/Equipment on Road Shoulder ☐ Camera/Equipment on median ☐ Other (explain)

## OPERATIONAL INFORMATION:

Number of Personnel and Vehicles:

Total Cast & Crew _____ Personal Cars _____ Large Trucks _____ Other Trucks _____ Vans

Camera Car _____ Picture Cars _____ Motor homes _____ Dressing Rooms

Other Vehicles (explain)

Base Camp location:

Catering Co. Name _____ Phone # _____

**SPECIAL ACTIVITIES:**

Children: None Yes # of Children _____ Age Range _____

Animals: None Yes (explain)

Trainer Name: _____ Phone #: _____

Aircraft: No Yes (explain)

Special Effects: (identify)

Effects Technician Name: _____ Phone # _____

License # (if applicable) _____ Permit # (if applicable) _____

Stunts: (explain)

Coordinator_____Phone #_____

Any other unusual or hazardous activities, explain

**Person on location responsible for company's adherence to all terms & conditions of a Film Permit**:

Name: _____ Title: _____ Phone: _____

**Person on location responsible for coordinating activities with the NPS:**

Name: _____ Title: _____ Phone: _____

**Person at the company office to contact for follow up information and billing:**

Name: _____Title: _____Phone: _____

I hereby state that the above information given is complete and correct, and that no false or misleading information or false statements have been given. All estimates are reliable to the best of my knowledge and I have the full authority to represent the applicant/production company and the project described above.

**Signature** _____ **Title** _____ **Date** _____

**Company Name** _____

Information provided will be used to determine whether a permit will be issued. Completed application must be accompanied by an application fee in the form of a cashiers check or money order in the amount of $___.00 made payable to **National Park Service**. Application and administrative charges are non-refundable. *This completed application should be mailed to Park address information.*

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**FINAL DRAFT**
July 14, 2008 – revised March 26, 2009

# GGNRA DOG MANAGEMENT PLAN

## Regulated Off-Leash Area (ROLA) Guidelines

- Dog walkers may walk dogs off leash only within designated ROLAs.

- Each off leash dog must be under voice and sight control at all times. Dogs are considered under control when they are within direct eyesight of the owner/guardian/handler and when they can be immediately recalled by their owner/guardian/handler.

- Dogwalkers must be able to recall their dog promptly, and shall demonstrate this ability when requested by Law Enforcement personnel.

- Any uncontrolled dog or dog that poses a threat to public safety is prohibited. Dogs are presumed to NOT be under control if they:
    - annoy, harass, or attack people, livestock, or other leashed or unleashed dogs,
    - intentionally or unintentionally annoy, pursue, hunt, harass, harm, wound, chase, attack, capture, or kill wildlife,
    - enter leash-required or dog-prohibited areas, and/or
    - dig, destroy vegetation, or enter fenced or closed areas.

- Dog owners must license their dogs in compliance with their county's animal ordinance.

- All dog walkers must have a leash for each dog under their care.

- Dogwalkers must keep dogs on leash in parking lots and on trails that provide access to ROLAs~~short distance beyond as identified in the plan.~~

- Dogwalkers using a ROLA must keep their unleashed pets within the ROLA boundaries. and out of any area closed by fence or sign for restoration, habitat protection or safety concerns that may occur within a ROLA.

- Dog walkers must pick up their dogs' feces immediately and dispose of them in a garbage container.

**Comment [SES1]:** We may not have to even say this, since on leash in parking lots is common to all alternatives and sites, and the trails that lead to ROLAs are marked as on leash in our alternatives. However, it isn't bad as a refresher!

December 14, 2012

Memorandum

Re: Definitions of voice control

As GGNRA develops the Supplement EIS for dog management, we were requested by the park's Visitor and Resource Protection Division to develop a clearer, less subjective definition of voice control that could be more easily enforced. The background on this subject:

- The Draft EIS that went out for public comment in 2011 defined voice control (in Appendix E, ROLA Guidelines) as:

  > Each off leash dog must be under voice and sight control at all times, meaning that dog walkers must be able to recall their dog promptly, and shall demonstrate this ability when requested by law enforcement personnel.

- The 2012 GGNRA Compendium contains the following definition of voice control – there is currently a question as to whether this is enforceable:

  > VOICE CONTROL means dogs are within earshot and eyesight of the owner/handler and respond immediately to commands to return to leash when called.

- A review of other agencies and municipalities rules on voice control found that none are more specific that require a prompt or immediate response (see attached summary). The one agency who seemed to provide more specificity, Marin Parks and Open Space, when contacted noted that this was not their regulation, but rather how they verbally described voice control to the public.

  > Returns to handler immediately when called (two calls with a return limit of 15 seconds). Dogs are required to remain within 30 feet of the handler when on fire roads.

- For the dog EIS, we requested advice from Cindy Machedo, the Director of Animal Services of Marin Humane, who was a representative on the dog management Negotiated Rulemaking Committee. She has long experience overseeing the Basic and Advanced Animal Law Enforcement Academies at Marin Humane Society. She advises that we describe vc more broadly. Voice control should elicit a prompt response, but that response may be different for different dogs/owners - the most prompt response for some dogs may not be an immediate return to owner, but a down and stay response. Since the goal of voice contol in an incident is to have the dog stop what it's doing immediately, that response would be effective. Based on Cindy's input, here's a proposed revision:

  > Each off leash dog must be under direct voice and sight control at all times, meaning that dog walkers must be able to gain immediate control of their dogs by demonstrating that their dog can positively respond to control commands. ~~with limited command attempts.~~

**Comment [SES1]:** Per Greg Lind

Overall, there are two outstanding questions:

1. How to define voice control for the dog management plan; is the proposed text sufficiently objective, specific and enforceable?
2. (Time permitting) Is a definition of voice control in the park compendium, prior to the completion of the dog plan/rule, enforceable?

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2. (Time permitting) Is a definition of voice control in the park compendium, prior to the completion of the dog plan/rule, enforceable?

**National Park Service/Mar Vista Stables**
**Town hall Meeting**
Saturday, December 12, 2009
10:00AM--12:00AM

**Summary**

**1. People in attendance:**
**Equestrians:** Patty Duffy, Annie Ellicott, Marilyn Garcia, Suzan Canli, Ed Seider, Susanne Crane, Maria Medeiros, Christian Medeiros, Lisa Dunmeyer, Betty Bortin, Tony Stritmatter, Holly Prohaska, Charity Frazier

**Agency Personnel**: Shirwin Smith, GGNRA Management Assistant, Lieutenant Connie Leonard, U. S. Park Police, Marybeth McFarland, GGNRA, Law Enforcement Specialist, Officer Erma Javier, U. S. Park Police

**2. GGNRA overview – lands and law enforcement personnel**
~~**In barn user terms**: the boarder is running east to west where the trail leads off of the beach-- our "up spot."~~

Agency representatives reviewed maps showing GGNRA and Fort Funston boundaries. The boundary between Fort Funston and Thornton Beach was described as following the fence line behind the buildings at the south end of Fort Funston, where the ranger office is located which stretches from Skyline Blvd. west to the water. **In barn user terms**: the GGNRA border runs east to west where the trail leads off of the beach-- our "up spot."

~~The~~ GGNRA Rangers and the U.S. Park Police are responsible for law enforcement at Fort Funston, which is part of a patrol area that stretches from Fort Miley south to the boundary of Fort Funston and Thornton State Beach. ~~The~~ California State Park Rangers are responsible for law enforcement at Thornton State Beach.

The USPP mounted horse patrol has recently begun regular patrols of Fort Funston. They will continue to do this, depending on staffing, etc. The mission of the Horse Mounted Unit is to patrol the area as objective enforcement officers.

**RIDING WITH THE HORSE MOUNTED PATROL**
Although we cannot schedule rides with the Horse Mounted Patrol, it is acceptable to ride with them if you see them on the trails. ~~We are allowed to ride with the Horse Mounted Patrol,~~ B~~b~~ut remember that they are there as enforcement officers first and foremost. S~~s~~how good horse etiquette and make sure they are aware of you if you ride up on them.~~and a~~If you would like to ride along with them, always ask it's OK before joining them ~~and make sure they are aware of you if you ride up on them. We cannot call the unit and schedule a ride with them. If you are there and they are there and everyone wants to ride together, then HAPPY TRAILS.~~ **Do**

**know** that they are on duty and are not there to ~~just~~ socialize-- if a situation looks like it is going bad, then get yourself in a safe place so they can do what they need to do without worrying about your safety.

**3. GGNRA Compendium**
This is a 33 page document which outlines rules specific to GGNRA, such as where horses are allowed. It is explained that it is a "living document" that is reviewed annually to address the changing uses and needs of the park. A copy can be provided to you if you would like to read it and it is also on the GGNRA web site http://www.nps.gov/goga/parkmgmt/lawsandpolicies.htm.

**4. Overview and status of dog management in GGNRA**
Dogs can be either on leash or under voice control ~~off lea~~sh in Fort Funston.

**Why??**
The GGNRA Advisory Commission made this recommendation to the park in 1979 and the park followed the recommendations for over 20 years. Currently, the NPS is developing a dog management regulation for GGNRA. Due to Federal Court o~~O~~pinion in 2005, until a new dog management rule is established for GGNRA, the 1979 pet policy remains in effect in all areas which were included in that policy. All other areas of the GGNRA are governed by the national NPS rule requiring dogs to be on leash where they are allowed.

**Will there be change?**
The Park service is developing an Environmental Impact Statement that analyzes various alternatives to manage dog walking in GGNRA lands (including Fort Funston, Ocean Beach, etc.). The draft EIS will be out in late Summer/Fall 2010. After the EIS is finalized, a regulation based on the preferred alternative will be put into place. Information about the current dog walking status and the EIS process is on the GGNRA website: www.nps.gov/goga/planyourvisit/pets.htm

**5. Legal questions/definitions**
**a. Definition of Off Leash**
A dog must be wearing a collar at all times and the owner of the dog must be carrying a leash for every dog under his/her care. To be off leash, the dog must be under voice ~~command~~control. There was a discussion as to what "voice ~~command~~control" means. Marybeth said that the idea is that you call the dog and it returns to you in any situation.

**b. Definition of dog incident**
**Criminal**: Property is damaged or a person/animal is injured.
If someone is seriously hurt on GGNRA land, call ~~911~~415-561-5656, GGNRA's Communications Center first for immediate response. If you are on Thornton State Beach, south of GGNRA land, call 911 or the GGNRA Comm Center. (Just a side

note, sometimes it is better to call the barn to call ~~911~~ for you because cell service gets relayed far away.) ~~If the situation is safe, call the emergency number: **415-561-5656**~~

**Non-Criminal:** There is a nuisance, but no one is in any apparent danger. For example, wildlife is being disturbed, naked people, dog problem, etc. If you can wait, the rangers will be out to meet you and can take a look at what you are reporting, then respond accordingly.
415-561-5505 (GGNRA Communications Center non-emergency number)

**Visitor Complaint:** ~~These are made to the dis~~To make a formal complaint, call the GGNRA Communications Center non-emergency number. ~~patch center and~~ This is ~~are~~ a way we can report general hazards or an issue or problem that affected you while visiting the park, or ~~something~~ that prevented you from having access to the park.
415-561-5505

**c. How to report incidents:**
Decide what sort of incident it is (listed above), make sure you are safe, then make the call. **Please** program all the numbers in your cell phone which you should be carrying on your person, not on the saddle, for every ride.

You will be required to give your name, contact information and the dispatcher will ask you a series of questions to get as much detail as possible. They are compiling data so it is important that we are prepared to provide as much information as possible.

**d. Rights of equestrians/rights of dog owners.**
We all have the right to use Fort Funston. That said, it is important to be aware of everyone's safety needs. Dog walkers ~~need to~~ should be aware of horses and make necessary allowances (for instance, recalling their dog). BUT, equestrians ~~need to~~ should also assess situations and use common sense when using the same area-- not entering into a situation that could get someone hurt.

**6. Suggestions for interactions with off leash dogs**
**a. How to address dogs running, chasing, barking.**

- Keep your horse facing the dog
- Look for the owner and politely ask them to collect their dog
- Make eye contact with the dog as a show of dominance
- Remain calm-- an agitated person can make an agitated horse.
- When you are safe, call the GGNRA ~~Dispatch~~ Communications Center to report an incident. 415-561-5505 (non-emergency number)
- Pepper spray is used only as a last resort, such as when a dog is actually attacking, or about to attack, your horse. ~~like when the dog is swinging from~~

~~your horses tail.~~ If the situation allows, tell the dog owner that their dog will be pepper sprayed if it is not collected as soon as possible.

**b. Suggested communications between riders and dog walkers in both non-emergency and emergency situations**

- Be patient, don't engage an anxious dog walker. If ~~enough~~ too much time passes without them taking some action, politely ask them to collect their dog.
- Calmly communicate your needs, for example, "It would be helpful for me if you called your dog."~~"~~
- If you are told that you do not belong in an area, politely inform the person that ~~this~~ Fort Funston is a multi-use area.
- Say "Thank you" to those people who collected their dogs-- it's good PR
- Offer to work with an individual to educate a dog about horses or let a child pet your horse. But ~~A~~always keep safety front in your mind.

Lt. Leonard stressed that interacting with ~~beach goers~~ other visitors in a negative way can result in very explosive situations (she gave some examples).

**7. Education/Outreach Suggestions**

**a. Future dog/ horse "park petiquette" events (introducing dogs to horses, explaining responsibilities of both).**

The idea is to set up training events for both dogs and horses to desensitize them to each other. The equestrians will work with the Fort Funston Dog Walk~~ing~~ers ~~groups~~ to ~~head up~~ organize some of these events.

As equestrians, it was discussed what we can do to help "bomb proof" our horses. Officer Javier talked about what Park Police horses are put through to get them prepared for any situation. She also admitted that some horses should not be in all situations-- they just do not have the temperament for it~~-- they have a police horse that cannot be in parades, nor can some horses go to Fort Funston because they cannot handle the dogs and high level of activity~~. She emphasized that it is important to "know your horse" and what their capabilities are. It was mentioned by Lt. Leonard to know your own skill level as a rider. Lt Leonard clarified that the Park Police cannot give specific training techniques and recommended for those people who need advice/training with their horses, to work with a trained professional who can help the owner ~~to~~ train the horse to overcome ~~their~~ its fears.

**b. What can equestrians do to help educate all users on best shared use behavior? (Fliers, website Q & A, Blogs, Bulletin Board Postings, etc.).**

- Collaborate with dog groups on education and outreach efforts
- Finalize horse/dog FAQ sheet-- was asked to be condensed
- Word of mouth
- Be an equestrian ambassador while out riding

**Action Items**

All equestrians should program the GGRNA emergency~~,~~and non-emergency, and barn numbers into their cell phones

Holly and Shirwin will contact Linda McKay ~~at~~ of the Fort Funston Dog Walkers for help with dog/horse FAQ document.

Shirwin will look into putting up signs, (shared use message in~~"~~ "wind masters") at trail heads in Fort Funston (e.g. Top of Sand Ladder, beginning of Chip Trail).

Shirwin will investigate the possibilities of signs ~~options~~ to show where the dividing line is between Fort Funston and Thornton Beach with changing regulations.

**Post Meeting Follow up.**

Holly Prohaska requested to remain the point person between the equestrians and agencies.

Susanne Crane has been asked to be "back up" to Holly on projects.

An equestrian task force has begun to be formed among the boarders to share some of the work load-- please feel free to jump on board. We are going to have lots of fun!!

Contact and discussions have been opened up with the representatives from the dog groups. They have responded very positively and are eager to meet with us and get events and education happening. We are working on the logistics-- more to follow.

**Thorton State Beach Contact**

Marybeth provided us with the contact information for the Thorton State Park.

~~Contact has been made with~~ Michael Grant, is the Supervising Ranger for the area for California State Parks. He reported that, technically, Thorton Beach is "closed" due to limited funding. He is very supportive of a clean up effort of Thornton beach and the "valley" area. We need to fill out a **volunteer form** (they are on their way) to have a clean up effort. We can let them know the day of the clean up to arrange hauling off the trash we bring up. He has also offered to provide trash bags.

**Thanks to:** Holly Prohaska, Lisa Dunmeyer, Suzan Canli and Susanne Crane for putting the information in this summary together.

# Weeders at Work