September 2011

Guidance for Non-Impairment Determinations and the NPS NEPA Process

This document provides guidance for completing non-impairment determinations for NPS actions requiring preparation of an environmental assessment (EA) or environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA).

A non-impairment determination states in writing that, in the professional judgment of the NPS decision-maker, the action selected in a finding of no significant impact (FONSI) or record of decision (ROD) will not result in impairment to park resources or values. The non-impairment determination is prepared for the selected action only, and must be completed prior to the signing of a FONSI or ROD by the NPS decision-maker. It must be appended to the FONSI or ROD in its entirety. If an action would impair park resources or values, it may not be selected.

Why is a Non-Impairment Determination Required?

Section 1.4.7 of *Management Policies 2006* states that

> [b]efore approving a proposed action that could lead to an impairment of park resources and values, an NPS decision-maker must consider the impacts of the proposed action and determine, in writing, that the activity will not lead to an impairment of park resources and values.

Actions that require preparation of EAs and EISs constitute actions that may have the potential to impair park resources or values. Therefore, a non-impairment determination must be made for any action selected in a FONSI or ROD that could impact park resources and values and to which the NPS is a signatory. The non-impairment determination is completed only for the selected action.

What is Impairment?

Sections 1.4.5 and 1.4.6 of *Management Policies 2006* provide an explanation of impairment. Section 1.4.5 defines impairment as

> an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values.

Section 1.4.5 goes on to state that

> [a]n impact to any park resource or value may, but does not necessarily, constitute an impairment. An impact would be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is
>
> - necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park, or
> - key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or
> - identified in the park's general management plan or other relevant NPS planning documents as being of significance.
>
> An impact would be less likely to constitute an impairment if it is an unavoidable result of an action necessary to preserve or restore the integrity of park resources or values and it cannot be further mitigated.

Section 1.4.6 of *Management Policies 2006* identifies the park resources and values that are subject to the no-impairment standard:

> The "park resources and values" that are subject to the no-impairment standard include:
>
> - the park's scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;
> - appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them;
> - the park's role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and
> - any additional attributes encompassed by the specific values and purposes for which the park was established.

How is a Non-Impairment Determination Made?

Section 1.4.7 of *Management Policies 2006* states that

> [i]n making a determination of whether there would be an impairment, an NPS decision-maker must use his or her professional judgment. This means that the decision-maker must consider any environmental assessments or environmental impact statements required by the National Environmental Policy Act of 1969 (NEPA); consultations required under section 106 of the National Historic Preservation Act (NHPA), relevant scientific and scholarly studies; advice or insights offered by subject matter experts and others who have relevant knowledge or experience; and the results of civic engagement and public involvement activities relating to the decision.

Management Policies 2006 defines "professional judgment" as

> a decision or opinion that is shaped by study and analysis and full consideration of all the relevant facts, and that takes into account the decision-maker's education, training, and experience; advice or insights offered by subject matter experts and others who have relevant knowledge and experience; good science and scholarship; and, whenever appropriate, the results of civic engagement and public involvement activities relating to the decision.

Information to assist with evaluating impacts for impairment is available from the NPS Natural Resource Program Center (NRPC) and the NPS Office of Policy. See NRPC's "Interim Technical Guidance on Assessing Impacts and Impairment to Natural Resources- July, 2003" (http://www2.nrintra.nps.gov/ard/docs/nrimpairment.pdf); the NRPC website (http://www.nature.nps.gov/); and the Office of Policy's "Park Protection" website (http:// www.nps.gov/protect). Please note, however, that the information contained in these sources is subject to revision.

How is a Written Non-Impairment Determination Prepared?

A non-impairment determination states in writing that, in the professional judgment of the NPS decision-maker, the action selected in a FONSI or ROD will not result in impairment to park resources or values. The non-impairment determination is prepared for the selected action only, and must be completed prior to the signing of a FONSI or ROD by the NPS decision-maker. It must be appended to the FONSI or ROD in its entirety. If an action would impair park resources or values, it may not be selected.

Non-impairment determinations are not included in EAs or EISs. However, the issue of impairment should be considered throughout the NEPA process and the non-impairment

determination should be drafted prior to release of the EA or Final EIS to the public. An EA or EIS may include a short discussion in Chapter 1, Introduction, in the Laws and Policies section, of impairment as described in *Management Policies 2006*, and should indicate that a written non-impairment determination will ultimately be prepared for the selected action and appended to the ROD or FONSI.

A non-impairment determination must include a discussion, for each impacted resource analyzed in detail in the associated EA or EIS, of why the selected action's impacts will not result in impairment. The impairment determination does not include discussion of impacts to visitor experience, socioeconomics, public health and safety, environmental justice, land use, park operations, etc., as these do not constitute impacts to park resources and values subject to the no-impairment standard.

When preparing the non-impairment determination, follow the steps below.

Step 1. List each impacted resource analyzed in detail in the EA or EIS associated with the selected action.

Step 2. For each impacted resource, describe why the selected action would not cause impairment of that resource. Remember, if the analysis indicates that the action would cause impairment, it may not be selected.

The level of detail provided in the non-impairment determination should be commensurate with the severity of the impacts. It is acceptable to provide references to the associated EA or EIS, but the determination must contain enough detail to stand on its own. The determination must avoid unsupported, conclusory statements. Rather, conclusions should be supported with "because" statements that provide specific information regarding the magnitude, extent, timing, duration, context, intensity, etc. of impacts.

The level of detail provided should be generally be greater for those impacted resources that are 1) necessary to fulfill the purposes for which the park was established, 2) key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or 3) identified as a significant resource in a park planning document. Section 1.4.5 of *Management Policies 2006* specifically mentions these types of resources as more likely to be subject to impairment from an impact.

Step 3. Append the non-impairment determination in its entirety to the FONSI or ROD.