



## United States Department of the Interior

NATIONAL PARK SERVICE  
1849 C Street, N.W.  
Washington, D.C. 20240

IN REPLY REFER TO:

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September 5, 2002

### Memorandum

To: Associate Directors, Regional Directors and Superintendents

From: Director /s/ **Fran P. Mainella**

Subject: Use of Service Animals by Persons with Disabilities in the National Park System

The purpose of this memorandum is to provide updated information regarding the use of service animals by persons with disabilities in the National Park System; to inform you of the intent to revise our current regulations regarding their use; and to provide interim guidance on what we as an agency must do in order to comply with Department of Justice (DOJ) guidelines and regulations and Section 504 of the Rehabilitation Act. This information will be incorporated into Director's Order #42 when it is updated.

### Background

Service animals for persons with disabilities have traditionally been understood to be guide dogs for blind individuals and hearing assistance dogs for persons with hearing impairments. Because these animals provide service for persons with disabilities, they are not considered to be pets and, consequently, are not regulated as pets. Accordingly, they have been allowed to go into areas where pets are traditionally prohibited. National Park Service (NPS) regulations codified at **36 CFR 2.15** currently recognize that "guide dogs for the blind" and "signal dogs for persons with hearing impairments" are exempt from other prohibitions on pets.

In 1990, with the passage of the Americans with Disabilities Act (ADA), DOJ expanded the concept of service animals to include those providing a service for individuals with other disabilities. Service animals are defined in 28 CFR 36.104 as, "any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items." **Section 36.302** states that entities,

“shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.”

**Section 36.104** also defines an individual with a disability as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Over the past several months a number of parks have received requests from the public to use service animals and the parks have raised questions about what types of service animals must be allowed. There has been some confusion for the parks because our current regulations recognize only guide dogs for individuals with visual impairments and signal dogs for those with hearing impairments. There have also been some increased concerns voiced regarding the potential threat to wildlife management with the allowance of service animals into areas where pets are prohibited.

### **NPS Position**

After careful review of the issues related to the use of service animals in the national parks, and based on the advice provided by the Solicitor’s Office, we conclude that we are legally required by Section 504 of the Rehabilitation Act to allow all types of service animals into the parks. The NPS will revise the regulations to adopt a broader interpretation of what a service animal is, and where service animals should be allowed. The NPS will use the same definition of service animal currently found in DOJ regulations (28 CFR36.104). Service animals will not be considered pets and, in general, when accompanying a person with a disability (as defined by Federal law and DOJ regulations), must be allowed wherever visitors or employees are allowed.

Due to the concern for wildlife management issues, the regulation will allow superintendents to close an area to the use of service animals if it is determined that the service animal poses a direct threat to the health or safety of people or wildlife. The regulation will also state that, in determining whether a service animal poses a direct threat, the superintendent must make an individualized assessment based on current scientific knowledge or on the best available objective evidence to ascertain the nature, duration and severity of the risk and the probability that the potential threat will actually occur; and provide an explanation why less restrictive measures will not suffice. We expect to have the proposed rule published in the Federal Register for public review and comment by fall of this year.

### **Interim Guidance**

Because it will take some time for the new regulation to become final, we are using this memorandum to provide guidance on what we need to do immediately in order to comply with the ADA, DOJ guidelines and regulations, and Section 504 of the Rehabilitation Act.

We have been advised by legal counsel that Congress has stated that their intent is that the coverage of the ADA, (which covers State and local governments and private entities) and Section 504 (which covers Federal agencies) should be essentially the same. The Department’s

regulations implementing and interpreting Section 504 are found at 43 CFR 17. Consequently, our current regulation (36 CFR 2.15), which recognizes only guide dogs for the blind and signal dogs for the hearing impaired, is unenforceable against persons with disabilities who rely upon service animals for other purposes. Therefore, all park units must immediately expand the definition of service animals to be consistent with the DOJ definition and allow all service animals accompanying persons with disabilities the same privileges currently provided to guide dogs and hearing assistance dogs.

Some park staff have raised questions regarding how they can be assured that the individual with a service animal is a qualified person with a disability and that the animal is indeed providing a service because of that disability. According to DOJ guidance, in most instances we cannot require individuals to show proof of disability nor to show official certification for their service animal. Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. **If you are not certain that an animal is a service animal, you may ask the person who has the animal if it is a service animal required because of a disability.** However, an individual with a disability is not likely to be carrying documentation of his or her medical condition or disability, and such documentation may not be required as a condition for allowing them in the park. DOJ has also stated that, although a number of States have programs to certify service animals, you may not insist on proof of State certification before permitting the service animal to accompany the person with a disability.

In some very limited situations the NPS may require additional procedures to verify that the animal is providing a service for a qualified person with a disability. The NPS already utilizes a procedure to determine if an individual is a qualified individual with a disability for purposes of receiving a Golden Access Passport. That procedure requires either written documentation of a disability or the signing of a statement attesting to having a disability as defined by Federal law. A similar procedure could be utilized with regard to service animals in cases where a superintendent believes it is necessary.

According to DOJ guidance, and as discussed above, a superintendent may close an area to all service animals upon an individualized assessment and a written determination that allowance of any domestic animal would pose a direct threat to the health and safety of people or wildlife. This determination must also follow the requirements of **36 CFR 1.5/1.7**. However, the legal burden is on the superintendent to justify closing an area of the park to service animals accompanying persons with disabilities.

We ask each superintendent to ensure that all staff that interact with the public, including our concessions staff, be informed of this decision and take whatever steps are necessary to implement this action as quickly as possible. If you have any questions regarding this issue, you may contact ~~David Park, Accessibility Program Coordinator at 202/513-7027, or Kym Hall, Regulations Program Manager at 202/208-4206.~~ \*

\* As of 2010, contacts are:

--Kay Ellis, Accessibility Program Manager, 202/513-7047

--Philip Selleck, Regulations Program Manager, 202/208-4206