

Guidance for Non-Impairment Determinations and the NPS NEPA Process April 2025

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.

To minimize the possibility of reaching impairment, *Management Policies 2006* Section 1.4.7.1 also requires the Service to avoid impacts that it determines to be unacceptable. A written determination for unacceptable impacts is not required, but the decision maker should consider whether the selected action would result in unacceptable impacts while reviewing the non-impairment determination.

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.

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. A non-impairment determination must include a discussion of why the selected action's impacts will not result in impairment for each impacted resource in the associated EA or EIS. The non-impairment determination does not include discussion of impacts to wilderness, 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 Organic Act no impairment standard. See Section 1.4.6 of *Management Policies 2006*. If the EA or EIS only carries forward for detailed analysis resources that are not subject to the no-impairment standard, a non-impairment determination should still be prepared. That determination should explain that the resources evaluated in detail are not subject to the no-impairment standard and include a discussion of other resources and unacceptable impacts as discussed below. Compliance with other laws should be addressed in the Basis or Rationale for the Decision in the FONSI or ROD and elsewhere in the project file, not in the non-impairment determination.

What steps should be followed when preparing a non-impairment determination?

Step 1. Identify the park's purpose, fundamental resources and values, and significant resources.

Review the park's foundation document or enabling legislation if a foundation document is not available, to determine whether any of the resources retained for detailed analysis in the EA or EIS are necessary to fulfill the park's purpose, are fundamental resources and values of the park or are included in the park's significance statements. The non-impairment determination should identify resources carried forward for analysis that are identified as these types of resources if they are subject to the no-impairment standard in Section 1.4.6 of *Management Policies 2006*.

Step 2. Describe why the selected action will not result in impairment for each resource carried forward for detailed analysis in the EA or EIS.

Remember, if the analysis indicates that the action would cause impairment, it may not be selected.

- If your NEPA analysis is organized by issues, rather than resource impact topics, consider the underlying resource analyzed in the issue.
- The level of detail provided in the non-impairment determination should be commensurate with the severity of the impacts. Greater detail is generally necessary for those impacted resources that are necessary to fulfill the park's purpose, fundamental resources and values, or significant resources (These resources should be identified above under Step 1). 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.
- The analysis in the EA or EIS should be incorporated by reference and appropriately cited, but the non-impairment determination must contain enough explanation 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.
- Consistent with the NEPA review, the analysis should disclose how the condition of each resource would change from its condition under no action. However, the analysis should ultimately focus on the condition of the resource that would result if the selected action were implemented.
- *Management Policies Section 1.4* and the Organic Act prohibit the impairment of park resources, not parks or areas of parks. As noted above, your analysis should focus on the condition of each resource overall, and the context of that resource within the park, not the condition of an area (although the condition of the area may be a relevant to context). Include relevant information about context to explain why a resource is not impaired. For example, you may wish to note how many or much of a resource you are impacting, its importance, or its abundance to explain why an action will not result in impairment.

Step 3. Address resources that were considered but dismissed in the EA and EIS and unacceptable impacts.

For impacts to resources that were considered but dismissed in your EA or EIS because the impacts were found to be of low intensity, in most cases you should include language similar to the paragraph below at the end of the non-impairment determination:

As was documented in the [EA or EIS], the Selected Action was found to have [minimal, negligible, or no] impacts on other resources such as [insert resources that were discussed in issues considered but dismissed]. See [appropriate sections of the EA or EIS] for more information. The impacts to these resources are small and insignificant. The resources will remain available to be enjoyed by current and future generations. Therefore, they will not be impaired by implementation of the Selected Action.

In instances where an issue or impact has been dismissed in an EA or EIS but there could still be meaningful adverse impacts to certain resources, you may want to address impacts to those resources along with the other resources that were carried forward for detailed analysis in the EA or EIS, as described above in Step 2. If this situation applies, you should consult with the Regional Environmental Coordinator to determine the best course of action.

Additionally, include a statement in the non-impairment determination that unacceptable impacts were considered but will not occur. As discussed above, a separate written determination is not required.

Step 4. Append the non-impairment determination in its entirety to the FONSI or ROD.

The non-impairment determination does not need a separate signature.