



# United States Department of the Interior

NATIONAL PARK SERVICE  
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Washington, DC 20240

IN REPLY REFER TO:  
10.A (2400)

## Memorandum

To: Associate and Assistant Directors  
Regional Directors

From: Associate Director, Business Services  
Associate Director (A), Visitor and Resource Protection

Subject: Managing Still Photography

## Background

Management of commercial filming and still photography in units of the National Park System is governed by 54 U.S.C. 100905 and 43 CFR Part 5, Subpart A. The National Park Service (NPS) may require a permit and the payment of fees for still photography activities only when the above-referenced statute and regulations require or allow the NPS to do so. Several units of the National Park System require a commercial use authorization (CUA) for certain commercial or professional still photography activities instead of using the applicable statute and regulations that govern still photography in System units. On June 2, 2023, the Associate Director, Business Services and the Associate Director, Visitor and Resource Protection, issued a Memorandum stating that the NPS may not require applicants or holders of CUAs for professional still photography to provide any financial information to the NPS, either as part of their application or during the term of their CUA. That Memorandum stated that the Washington Office would prepare additional guidance about managing still photography in System units. That guidance is found in this Memorandum which states, in addition to other guidance provided, that CUAs may not be used to manage still photography activities. This guidance does not affect the management of filming in System units.

## Legal Framework – Permits

As stated above, the NPS must manage still photography consistent with the statutory and regulatory requirements found in 54 U.S.C. 100905 and 43 CFR Part 5, Subpart A. Under these authorities, the NPS requires a permit for still photography only in limited circumstances:

- First, the NPS will require a permit for photography that uses a model, set, or prop.
- Second, the NPS may require a permit for photography if the NPS determines that a permit is necessary because the photography either –
  - Takes place in an area closed to the public; or
  - Requires the NPS to incur costs to manage the activity to protect resources or minimize visitor use conflicts.

For news-gathering activities that involve still photography, the NPS may only require a permit if the NPS determines that a permit is necessary to protect natural and cultural resources, to avoid visitor use conflicts, to ensure public safety or authorize entrance into a closed area; and if obtaining a permit will not interfere with the ability to gather the news.

If none of the criteria restated above are met, the NPS may not require a permit for still photography activity in System units.

The terms “model” and “sets and props” are defined in 43 CFR 5.12.<sup>1</sup> Notably, portrait subjects such as wedding parties and high school graduates are not considered models if the image will not be used to promote or sell a product or service.

### Legal Framework – Fees

If still photography requires a permit, the NPS will collect a location fee and, separately, reimbursement for actual costs the NPS incurs in processing the request and administering the permit. The only exception is for still photography permits for news-gathering activities, which are not subject to location fees or cost recovery charges.

The NPS will charge location fees according to the location fee schedule that applies to still photography in System units. The amount charged will correspond to the location fee schedule in effect when the permit is issued. The location fee for still photography must be reasonable and provide a fair return to the United States. Individuals and entities who enter a System unit for the purpose of conducting still photography activities under a permit are not required to pay entrance and expanded amenity use fees.

Separately and in addition to the location fee, permittees must reimburse the NPS for actual costs the NPS incurs in processing the application and administering the permit. The NPS must base cost recovery charges upon its direct and indirect expenses including, but not limited to, administrative costs for application processing, preproduction meetings and other activities, on-site monitoring of permitted activities, and site restoration.

Location fees and recovered costs for still photography permits remain available until expended without further appropriation.<sup>2</sup>

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<sup>1</sup> “Model” means a person or object that serves as the subject for commercial filming or still photography for the purpose of promoting the sale or use of a product or service. Models include, but are not limited to, individuals, animals, or inanimate objects, such as vehicles, boats, articles of clothing, and food and beverage products, placed on agency lands so that they may be filmed or photographed to promote the sale or use of a product or service. For the purposes of this part, portrait subjects such as wedding parties and high school graduates are not considered models if the image will not be used to promote or sell a product or service.

“Sets and props” means items constructed or placed on agency lands to facilitate commercial filming or still photography including, but not limited to, backdrops, generators, microphones, stages, lighting banks, camera tracks, vehicles specifically designed to accommodate camera or recording equipment, rope and pulley systems, and rigging for climbers and structures. Sets and props also include trained animals and inanimate objects, such as camping equipment, campfires, wagons, and so forth, when used to stage a specific scene. The use of a camera on a tripod, without the use of any other equipment, is not considered a prop.

<sup>2</sup> 54 U.S.C. 100905(e).

In addition to addressing permit and fee requirements, the implementing regulations address other topics related to still photography in System units not addressed by this Memorandum. These include criteria for denying a permit, liability and bonding requirements in permits, permit processing, and appeals of decisions to not issue a permit.

## **Guidance**

Effective immediately, the NPS must manage still photography in the following manner:

1. The statute and regulations governing still photography refer to “permits” but do not specify the type of permit that the NPS may require for still photography. A CUA is a permit that authorizes the provision of commercial visitor services in limited circumstances. A special use permit (SUP) is a permit that authorizes an activity that provides a benefit to an individual, group, or organization rather than the public at large.

The NPS must manage still photography under SUPs, not CUAs. SUPs for still photography may be issued for up to two years to provide certainty and consistency to photography businesses that have been operating under CUAs, which are limited to two-year terms. SUPs are the appropriate type of permit for managing still photography for several reasons. First, the legal criteria for requiring CUAs are inconsistent with the legal criteria for requiring permits for still photography. NPS authority to require a permit for still photography is unrelated to whether the photography is provided as a commercial visitor service in System units. In contrast, CUAs are used to manage commercial visitor services exclusively.<sup>3</sup> In practice, using CUAs to manage professional photography has raised questions about whether the NPS is requiring permits for still photography in a manner not authorized by law. Second, it is more appropriate for the NPS to manage still photography under the law that governs this specific activity, rather than under the general law that governs CUAs and not still photography specifically. The NPS may continue to manage still photography under existing CUAs until they expire, in accordance with the June 2, 2023, Memorandum, but may not issue new CUAs for still photography on or after the date of this Memorandum.

In many cases, individuals and entities conducting still photography activities will not need a still photography permit. This does not exempt them, however, from permit requirements that apply to other activities they conduct in System units.

For example, a company that provides guide services to visitors within a System unit, and as part of those services takes and sells photographs of participants, may be subject to CUA requirements for their guide services. As another example, photographers who provide instruction to paid customers as a business (e.g., photography workshops) may need to obtain a CUA, not for the photography itself, but for the business of instructing customers. If the NPS issues a CUA for a commercial activity, and the authorized activity involves incidental or related still photography activities, then the NPS may manage the CUA holder’s photography activities as part of the authorized activity through the terms

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<sup>3</sup> See 54 U.S.C. 101925.

and conditions of the CUA. In these circumstances, the photography is part of an activity that requires some degree of management to protect park resources and visitors.<sup>4</sup>

Similarly, if the NPS issues an SUP for a special event, demonstration, or other activity, and the permitted activity involves photography, then the NPS may manage the permittee's photography activities as part of the permitted activity through the terms and conditions of that SUP. In these circumstances, as with CUAs, the photography is part of an activity that requires some degree of management to protect park resources and the public interest.<sup>5</sup>

In both cases, managing the associated still photography activities under the terms and conditions of the CUA or SUP is consistent with one of the criteria allowing the NPS to require a permit for still photography, which is if the NPS would incur costs to manage the activity to protect resources or visitors. The NPS should not require a separate, second permit to manage the photography activities in these circumstances. Other parties, independent from the permittee, who wish to take photographs of the activity may need to obtain a still photography permit consistent with the guidance provided in this Memorandum.

2. The NPS may not require an SUP for still photography in System units unless one or more of the criteria set forth in 43 CFR 5.2(b) are met. Under these criteria, it is not relevant whether the photographer is taking photographs for the purpose of generating income or not, except for the limited purpose of determining whether portrait subjects are being used to promote or sell a product or service. If so, then the portrait subjects are considered models and the NPS will require an SUP for the photography activities for that reason. An example would be a clothing manufacturer that hires a photographer to take photographs of a person, and then uses the photographs to sell clothing in an advertising campaign. In most cases, the person hiring a portrait photographer will use the photographs for personal enjoyment only. It is common for portrait photographers to retain rights to use the photographs taken to promote their portrait photography business to future clients. This secondary use of the photographs alone does not make the portrait subjects "models" under the regulations.

Due to the limited circumstances in which the NPS can require an SUP for still photography, in most cases photography by visitors will be exempt from permit and fee requirements.

3. Even if still photography does not use models, sets, or props, and does not take place in a closed area, the NPS may still require an SUP if the NPS would incur costs to manage the activity to protect resources or minimize visitor use conflicts, including health or safety risks. The NPS can incur costs from on- and off-site management of photography activities. In many cases, off-site management will suffice to protect resources and visitors. Off-site management may include using appropriate terms and conditions in the SUP, engaging in clear and consistent communication with the permittee, and assigning

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<sup>4</sup> See 54 U.S.C. 101925(b).

<sup>5</sup> See 2006 NPS Management Policies, Section 8.6.1.

times and locations for permitted activities. In some cases, on-site management may be necessary. If so, the NPS may require an NPS employee to be present when the photography takes place to ensure compliance with permit terms and conditions and other applicable rules.

The NPS should develop a comprehensive administrative record supporting permit requirements for still photography. This is true whenever an SUP is required, but particularly when an SUP is required solely because the NPS would incur management costs (i.e., when the photography does not use models, sets, or props; and the photography occurs in areas open to the public). The administrative record should include all relevant information and materials about the still photography activities, including information about prior and potential impacts to resources and visitors, and documentation of compliance with applicable laws and policies.<sup>6</sup> The administrative record also should include documentation of the correspondence between the NPS and the photographer related to the permitted activities.

4. When an SUP is required for still photography, the NPS may include terms and conditions that are intended to protect the site's values, purposes, and resources, and public health and safety; and prevent unreasonable disruption of the public's use and enjoyment of the site. The NPS may revoke a still photography permit if the permittee violates a term or condition of the SUP.

Depending upon the complexity of the activity, convening an interdisciplinary team at the park or regional level may be appropriate to identify all the SUP terms and conditions that may be required to mitigate impacts. This coordination could occur during the compliance process for the permit decision and include participation from managers and staff working in fields such as resource management, law enforcement, facilities and lands, and interpretation and education. Consistent with the June 2, 2023, Memorandum, permit applications and SUPs for still photography may not require the permittee to provide any financial information to the NPS, including information about revenue and rates or other business activities. Applications may require the permittee to provide a taxpayer identification number, such as an employer identification number (EIN) or social security number (SSN), to allow the NPS to process the permit application and collect required fees.

5. NPS staff should refer to the FBMS account sheet that is posted to the Special Park Uses (SPU) Program SharePoint site to determine which accounts should be used to deposit location fees and cost recovery amounts for still photography permits. The NPS should charge the amount shown on the location fee schedule that is posted on the SPU SharePoint site. Location fees do not need to be collected every time still photography occurs under an SUP. The terms and conditions of the permit may require the permittee to pay a location fee for all still photography activities that occur within a designated timeframe, such as at the end of each month or year, or upon expiration of the permit.

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<sup>6</sup> The NPS requires the use of PEPC for documenting all compliance actions for the approval or denial of an SUP, including compliance with NEPA and the NHPA. PEPC is the repository for documenting compliance but should not be considered the repository for all administrative records for SUPs.

System units where still photography occurs may retain 80% of the proceeds from location fees, with the remainder deposited in an account managed by the Washington SPU Program Office. All cost recovery amounts should be retained at the System unit where the photography occurs. NPS staff should follow annual Service-wide Comprehensive Call guidance from the Washington Budget Office about the appropriate use of location fee and cost recovery funds.

In many System units, the NPS recovers a base amount of its administrative costs in the form of a permit application fee. This application fee should represent reasonable costs incurred by NPS staff to review and process a typical permit. The NPS may recover additional costs commensurate with the size and complexity of the permit. The NPS may not recover amounts that exceed actual costs incurred to administer the permit or manage the still photography activity. Using the cost recovery authority to generate revenue above actual costs the NPS incurs is prohibited.

The NPS may not collect other fees for still photography activities. This prohibition applies notwithstanding any laws or policies that govern the NPS CUA Program. Management fees may be collected for commercial operations or uses authorized under CUAs that involve incidental or related photography activities, as described above.

### **Further Information**

Please contact the following individuals if you have questions about this memorandum and how still photography should be managed as a result:

- For questions about how to use SUPs to manage still photography, please contact your regional Special Park Use Coordinator or Maggie Tyler, Special Park Uses Program Manager, [maggie\\_tyler@nps.gov](mailto:maggie_tyler@nps.gov), (202) 513-7092.
- For questions about using CUAs to manage businesses that involve still photography, please contact Samantha Towery, NPS CUA Program Manager [samantha\\_towery@nps.gov](mailto:samantha_towery@nps.gov); 303-880-0962.