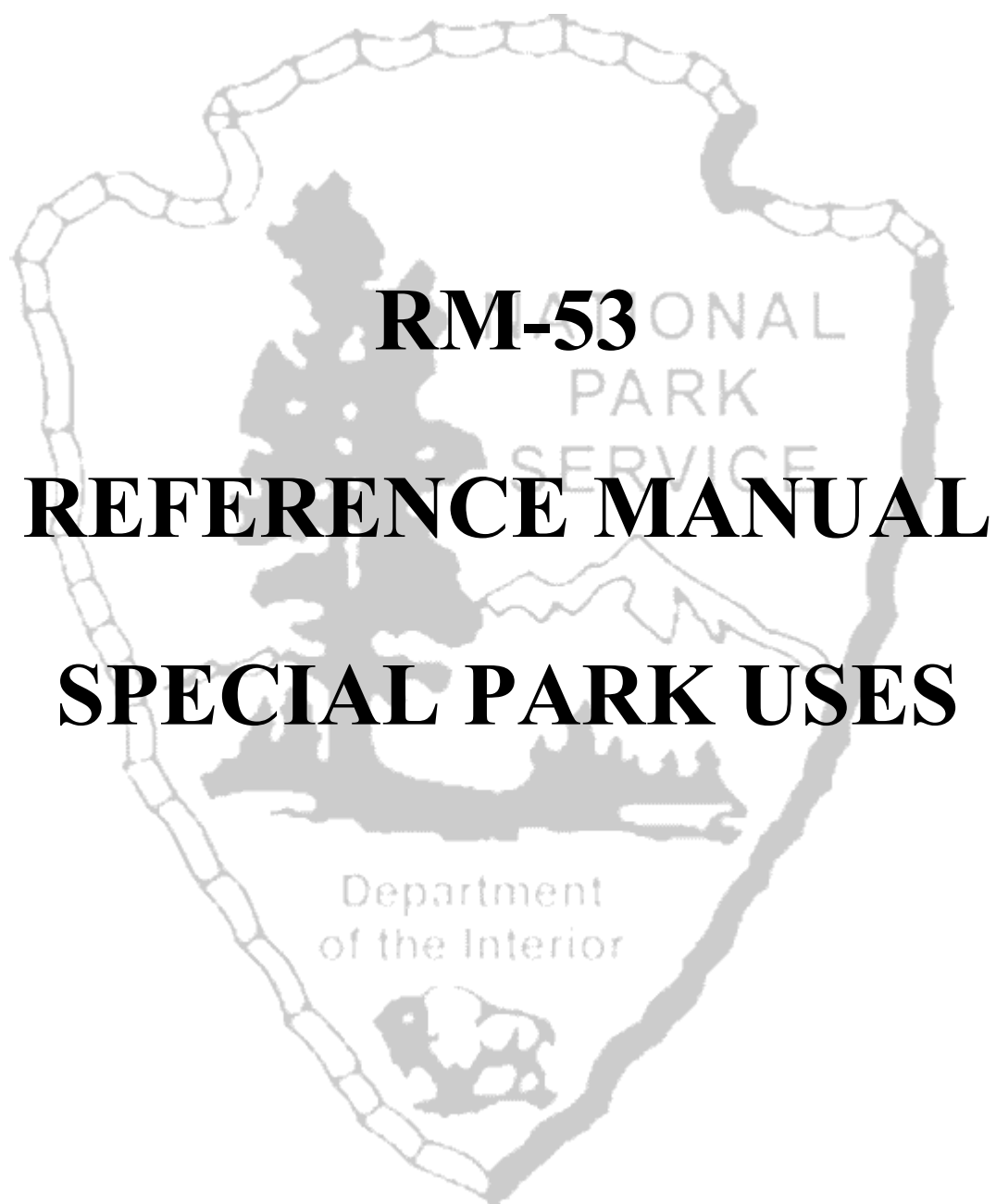


Note to reader: although dated April 2000, this document is current as of June 2009.

All current versions of Special Park Use policy memos and Director's Order #53, Special Park Uses, can be accessed at [NPS.GOV/policy](https://www.nps.gov/policy).



**RM-53**

**REFERENCE MANUAL**

**SPECIAL PARK USES**

**RELEASE NUMBER 1**

**APRIL 2000**

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## **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.

**RM-53 SPECIAL PARK USES**  
**NPS AUTHORITIES**  
**LIST OF AUTHORITIES**

**CHAPTER 3**  
**EXHIBIT 1**  
**Page C3-6**

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 statutes 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 statutes. These state statutes must be quoted in any Service law enforcement reciprocal agreement. In addition, if the state has a statute 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

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**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 - CERCLA**

**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.

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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

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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. 5901), any recreation use covered by section 4 of the Land and Water Conservation Fund Act (16 U.S.C. 4601-6a), any recreation use covered by the Recreation Fee Demonstration Program (16 U.S.C.4601-6a 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.

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**POLICY GUIDANCE**  
**COMPILING THE ADMINISTRATIVE RECORD**

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**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.

**RM-53 SPECIAL PARK USES**  
**COMPLIANCE REQUIREMENTS**  
**PRELIMINARY INFORMATION CHECKLIST**

**CHAPTER 6**  
**EXHIBIT 1**  
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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 low 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:

Project Location: (attach map)

Project Start Date:

Project Completion Date:

Project Initiator:

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	19 Change existing traffic flow/circulation	Y/N/U
2 Consult with affected local, state, regional agencies	Y/N/U	20 Change the amount of waste disposal	Y/N/U
3 Affect cultural or archaeological resources (structures/sites) <sup>1</sup>	Y/N/U	21 alter available visitor services or activities (parking, trails, recreation, handicapped access)	Y/N/U
4 Affect the historic scene	Y/N/U	22 Involve or affect wild or scenic rivers	Y/N/U
5 Affect the visual scene or quality	Y/N/U	23 Impact to biodiversity	Y/N/U
6 Involve ground disturbance, highly erodible soils, bedrock, streambeds or geohazards	Y/N/U	24 Change or add light sources	Y/N/U
7 Create stormwater runoff or erosion and sedimentation	Y/N/U	25 Involve or impact prime farmland, grazing	Y/N/U
8 Change surface or ground water flow or quantity	Y/N/U	26 Involve the use of pesticides, herbicides, etc.	Y/N/U
9 Affect surface or ground water quality	Y/N/U	27 Involve the use, handling, storage, disposal, discharge of oil, hazardous or toxic substances	Y/N/U
10 Affect air resources or quality	Y/N/U	28 Add or remove safety or public health threats	Y/N/U
11 Affect federal or state rare, endangered, threatened, unique or special concern plants, animals, or habitats	Y/N/U	29 Involve Coastal Zone Management areas	Y/N/U
12 Affect wetlands or riparian zone (forested or non-forested) <sup>2</sup>	Y/N/U	30 Involve American Indian Religious Use	Y/N/U
13 Affect floodplains	Y/N/U	31 Require Federal, State, or local permits	Y/N/U
14 Involve structures, fill, or discharge of dredged materials into navigable water	Y/N/U	32 Affect other agencies, tribal land use plans or policies	Y/N/U
15 Affect, add or remove vegetation (exotics, revegetation, landscaping)	Y/N/U	33 Affect minority or low income populations	Y/N/U
16 Affect wildlife (terrestrial or aquatic) and associated habitats	Y/N/U	34 Other socioeconomic impacts	Y/N/U
17 Change existing noise level	Y/N/U	35 Affect energy resources including conservation	Y/N/U
18 Involve Wilderness	Y/N/U	36 Involve subsistence use	Y/N/U
		37 Cumulative Impacts (explain below) <sup>3</sup>	Y/N/U
		Other (specify below)	Y/N/U

**Explain each of the above "Yes" answers, by number, and any proposed mitigation ( use separate sheet if needed):**

<sup>1</sup> 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.

<sup>2</sup> If yes, separate clearance through WASO-WRD required.

<sup>3</sup> 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):**

**Categorical Exclusion (CX): YES / NO      Categorical 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, recreation 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 CRMS Chief, Maintenance	Chief, RMVP Special Park Use Coordinator 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.

- (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 guard-rails, 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 change 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:

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*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.

.....

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 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.

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**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))**

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**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.)

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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* ☐

Effect: \_\_\_No Effect \_\_\_No Adverse Effect \_\_\_Adverse Effect

\_\_\_Programmatic Exclusion

Recommendations for conditions or stipulations:

Assessment of

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**[ ] CURATOR**

Name:

Date:

Comments

Assessment of Effect: \_\_\_No Effect \_\_\_No Adverse Effect \_\_\_Adverse Effect  
\_\_\_Programmatic Exclusion

Recommendations for conditions or stipulations:

---

**[ ] ETHNOGRAPHER**

Name:

Date:

Comments:

Assessment of Effect: \_\_\_No Effect \_\_\_No Adverse Effect \_\_\_Adverse Effect  
\_\_\_Programmatic Exclusion

Recommendations for conditions or stipulations:

---

**[ ] HISTORIAN**

Name:

Date:

Comments:

Assessment of Effect: \_\_\_No Effect \_\_\_No Adverse Effect \_\_\_Adverse Effect  
\_\_\_Programmatic Exclusion

Recommendations for conditions or stipulations:

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**[ ] 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:



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**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

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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?

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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 its 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?

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**PERMITTING AND RENEWAL CONSIDERATIONS**

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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)



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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 |

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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 ccmil message to Tarsha Edwards WASO POPS and ask her to mail your park one copy.

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### **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**

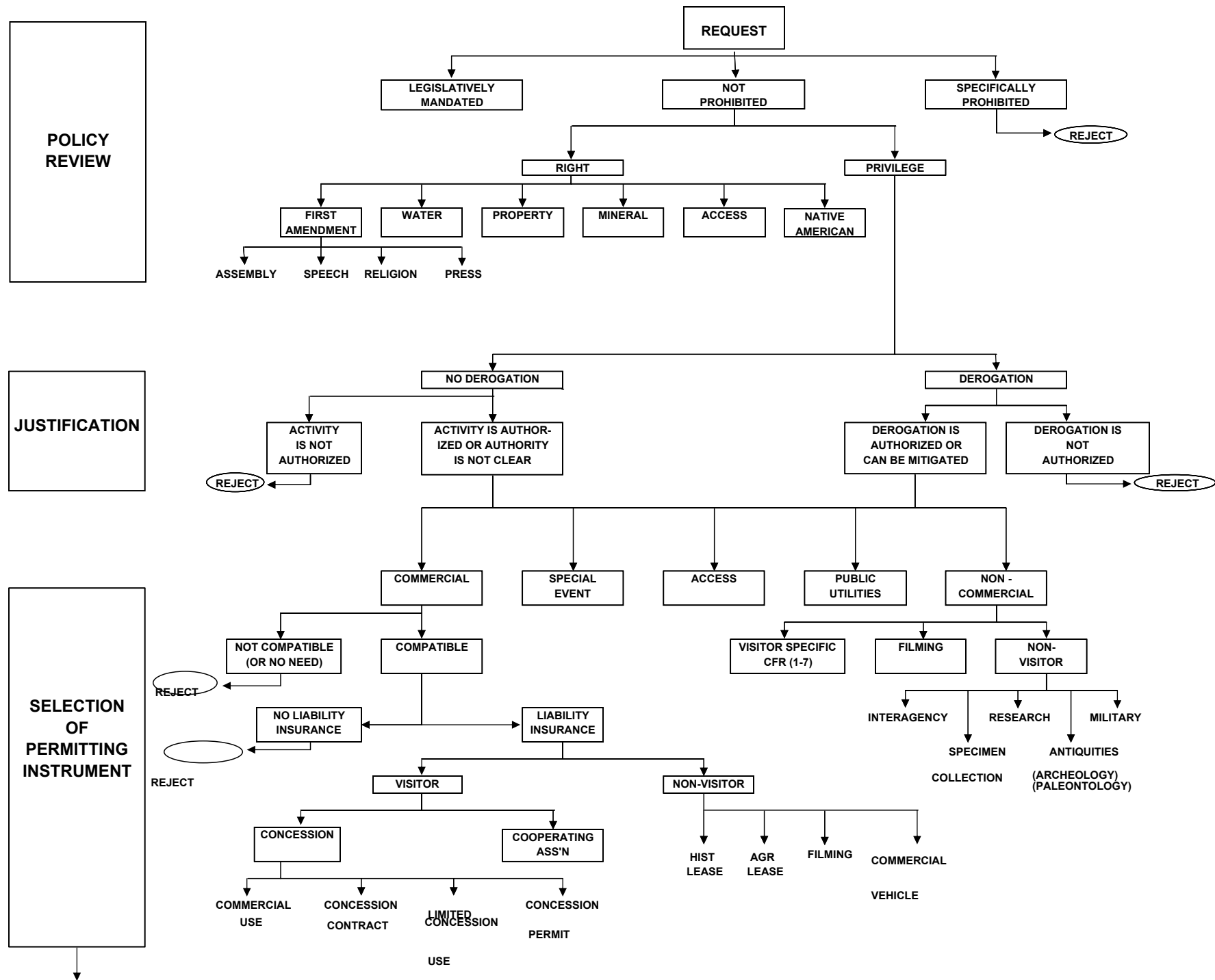
As noted in the second section of this Chapter, park managers should review each permitting instrument for every existing special park use well in advance of its expiration date. If the activity is found to be without legal authorization or is judged to be no longer appropriate and compatible with the 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.

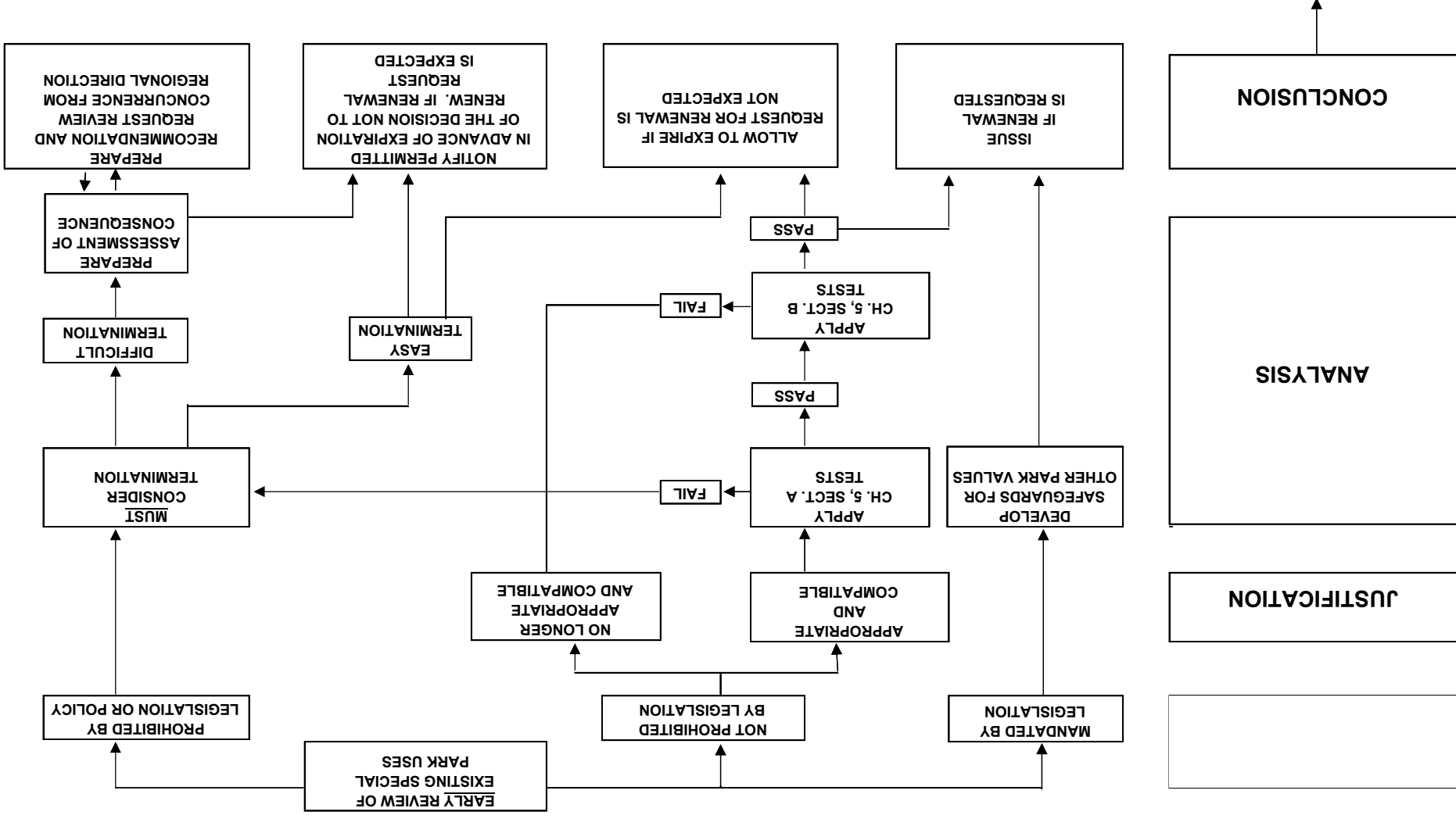
# FLOW CHART FOR SPECIAL PARK USE INITIAL REQUESTS





**FLOW CHART FOR SPECIAL USE - RENEWAL REQUESTS**

Sheet1



**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

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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:

| <b><u>Total Cost Of:</u></b>                                  | <b><u>Regular</u></b> | <b><u>Overtime</u></b> |
|---------------------------------------------------------------|-----------------------|------------------------|
| <b>1. Personnel (all grades)</b>                              |                       |                        |
| Visitor Protection                                            |                       |                        |
| Interpretation/Visitor Services                               |                       |                        |
| Resource Management                                           |                       |                        |
| Maintenance                                                   |                       |                        |
| Administration                                                |                       |                        |
| Other                                                         |                       |                        |
| <b>2. Official Travel Associated With Permit:</b>             |                       |                        |
| Visitor Protection                                            |                       |                        |
| Interpretation/Visitor Services                               |                       |                        |
| Resource Management                                           |                       |                        |
| Maintenance                                                   |                       |                        |
| Administration                                                |                       |                        |
| Other                                                         |                       |                        |
| <b>3. Conducting an Appraisal or Comparison:</b>              |                       |                        |
| Visitor Protection                                            |                       |                        |
| Interpretation/Visitor Services                               |                       |                        |
| Resource Management                                           |                       |                        |
| Maintenance                                                   |                       |                        |
| Administration                                                |                       |                        |
| Other                                                         |                       |                        |
| <b>4. Environmental/Cultural Assessment or Impact:</b>        |                       |                        |
| Visitor Protection                                            |                       |                        |
| Interpretation/Visitor Services                               |                       |                        |
| Resource Management                                           |                       |                        |
| Maintenance                                                   |                       |                        |
| Administration                                                |                       |                        |
| Other                                                         |                       |                        |
| <b>5. Supplies, Equipment, Utilities and other Resources:</b> |                       |                        |
| Visitor Protection                                            |                       |                        |
| Interpretation/Visitor Services                               |                       |                        |
| Resource Management                                           |                       |                        |
| Maintenance                                                   |                       |                        |
| Administration                                                |                       |                        |
| Other                                                         |                       |                        |

**RM-53 SPECIAL PARK USES**  
**MANAGEMENT OF PERMIT FEES**  
**REQUEST FOR BILL FOR COLLECTION**

**CHAPTER 10**  
**EXHIBIT 2**  
**Page C10-11**

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



**RM-53 SPECIAL PARK USES**  
**MANAGEMENT OF PERMIT FEES**  
**REQUEST FOR BILL FOR COLLECTION**

**CHAPTER 10**  
**EXHIBIT 2**  
**Page C10-12**

**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, statutes, 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.

**RM-53 SPECIAL PARK USES**  
**NATIVE AMERICAN RELATIONS AND USES**

**APPENDIX 2**  
**Page A2-3**

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 its 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.

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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

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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 be 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-

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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

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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.

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- 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.

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**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 Permitter) 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



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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 Permitter 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

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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 Permitter 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 Permitter in the event of nonuse or abandonment for a period of two years by the Permittee. In the case of termination, the Permitter will provide the Permittee with written notice including reasons for the termination.

**FEES FOR USE AND OCCUPANCY**

The Permitter 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 Permitter for administrative and other costs incurred by the Permitter 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 Permitter for costs incurred by the Permitter 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.

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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.

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(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.

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(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.

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(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.

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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



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**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 Permitter) 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

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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 Permitter 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**.

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(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

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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 Permitter 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 Permitter in the event of nonuse or abandonment for a period of two years by the Permittee. In the case of termination, the Permitter will provide the Permittee with written notice including reasons for the termination.

**FEES FOR USE AND OCCUPANCY**

The Permitter 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 Permitter to fully insure compliance with the permit terms and conditions.

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(8) The Permittee shall be responsible to pay the Permitter 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 Permitter 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

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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.

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(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.

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- 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

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reviews. 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-

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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 its 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 its 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-

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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

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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



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Right-of-Way Permit 4290-89-016  
Amendment Number 02

Issued: 06/14/89  
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° 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° 35' W for a distance of 55 feet, thence under State Route 704, S 77° 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° 29' W for a distance of 320 feet, thence continuing along the edge of pavement of the north side of Union Road, S 77° 31' E for a distance of 68 feet, thence S 82° 04' E for a distance of 182 feet, thence S 70° 32' E for a distance of 73 feet, thence S 68° 20' E for a distance of 290 feet, thence S 89° 40' E for a distance of 108 feet, thence N 74° 21' E for a distance of 141 feet, thence N 87° 22' E for a distance of 66 feet, thence S 80° 51' E for a distance of 223 feet, thence S 75° 53' E for a distance of 93 feet, thence S 59°

31' E for a distance of 118 feet, thence S 57° 31' E for a distance of 145 feet, thence S 55° 41' E for a distance of 166 feet, thence leaving Union Road and continuing underground N 42° 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

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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, 2000.

/signed  
C. Wayne Williamson  
District Manager  
Virginia Electric and Power Company

/signed  
\_\_\_\_\_  
Attest

**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**

**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.

Application Number

Date Filed

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.

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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)*

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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.

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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.

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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.

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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.

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20. Name all the Department(s)/Agency(ies) where this application is being filed.

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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

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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.

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**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.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>NOTICE</b></p> <p>The Privacy Act of 1974 provides that you be furnished the following information in connection with information required by this application for an authorization.</p> <p><b>AUTHORITY:</b> 16 U.S.C. 310; 5 U.S.C. 301.</p> <p><b>PRINCIPAL PURPOSE:</b> The information is to be used to process the application.</p> <p><b>ROUTINE USES:</b> (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.</p> | <p><b>EFFECT OF NOT PROVIDING INFORMATION:</b> Disclosure of the information is voluntary. If all the information is not provided, the application may be rejected.</p> <p align="center"><b>DATA COLLECTION STATEMENT</b></p> <p>The Federal agencies collect this information from applicants requesting right-of-way, permit, license, lease, or certification for the use of Federal lands.</p> <p>The Federal agencies use this information to evaluate the applicant's proposal.</p> <p>The public is obligated to submit this form if they wish to obtain permission to use Federal lands.</p> <p>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.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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*

7 Attach preliminary site and facility construction plans. The responsible agency will provide instructions whenever specific plans are required.

8 Generally, 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.

9 10, 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 in 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. For 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 data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department 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".

**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 interspersions 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 its 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

**RM-53 SPECIAL PARK USES**  
**AGRICULTURAL USE**  
**SUGGESTED REQUIRED INFORMATION**

**APPENDIX 7**  
**EXHIBIT 1**  
**Page A7-9**

**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).



**RM-53 SPECIAL PARK USES**  
**AGRICULTURAL USE**  
**SUGGESTED REQUIRED INFORMATION**

**APPENDIX 7**  
**EXHIBIT 1**  
**Page A7-10**

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.

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3. Do you or an employee have a current (**STATE**) license to apply agricultural related pesticides? Also, list different certifications?

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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.

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5. Are you willing to abide by the attached conditions if you are given a permit? \_\_\_\_\_

**APPENDIX 7**  
**EXHIBIT 1**  
**Page A7-11**

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- [illegible]

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.

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**AGRICULTURAL USE**  
**YIELD AND PLANTING REPORT – EXAMPLE**

**APPENDIX 7**  
**EXHIBIT 3**  
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**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)

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PERMITTEE'S SIGNATURE

DATE

**RM-53 SPECIAL PARK USES**  
**AGRICULTURAL USE**  
**INTEGRATED PEST MANAGEMENT USE PROPOSAL**

**APPENDIX 7**  
**EXHIBIT 4**  
**Page A7-23**

**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:

## **INTEGRATED PEST MANAGEMENT USE PROPOSAL**

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## SAFETY PRECAUTIONS:

NAME OF CERTIFIED APPLICATOR WHO WILL APPLY PESTICIDE:

HAS:\_\_\_\_\_

monitoring, determining injury and action level, use of biological, physical, cultural methods, etc.

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.



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**SPECIAL USE PERMIT CONDITIONS – EXAMPLE**

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**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:

| <u>Allotment</u> | <u>Livestock Number (AUM)</u> | <u>Season of Use</u>        |
|------------------|-------------------------------|-----------------------------|
| 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.

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- (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.

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**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

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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**

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- (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:

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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

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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.



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- (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.

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Permittee and Allotment

Date

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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 Area within Unified Region 1-North Atlantic-Appalachian, special events are further defined in *36 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 of 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 Area within Unified Region 1- North Atlantic- Appalachian 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 recover 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<sup>th</sup> 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

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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.

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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.

**RM-53 SPECIAL PARK USES**  
**SPECIAL EVENTS**  
**SPECIAL EVENT CONSIDERATIONS**

**APPENDIX 10**  
**EXHIBIT 2**  
**Page A10-12**

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 its 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.

**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):

| <u>Code</u> | <u>Type of Use</u>             | <u>Code</u> | <u>Type of Use</u>    |
|-------------|--------------------------------|-------------|-----------------------|
| 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):

| <u>Code</u> | <u>Type of Use</u>                                      | <u>Code</u> | <u>Type of Use</u>                             |
|-------------|---------------------------------------------------------|-------------|------------------------------------------------|
| 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,<br>Ultralights, & Parachuting | 5300        | Business Operations                            |
| 2380        | Explosives, Fireworks                                   | 5400        | Commercial Passenger-Carrying Motor<br>Vehicle |
| 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                                          |

**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,<br>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-XXXX      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 a 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 statute.
- 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**

**RM-53 SPECIAL PARK USES**  
**FILMING AND PHOTOGRAPHY**

**APPENDIX 13**  
**Page A13-19**

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.

### **APPLICATION FORMS**

Forms are available on the internal [Special Park Uses SharePoint site](#) (National Park Service staff must be connected to a secure NPS network or our VPN. All other users will encounter an error message.)<sup>1</sup>

**EXHIBIT 2:** [NPS 10-931-Application for Special Use Permit filming/Still Photography \(Short Form\)](#)

**EXHIBIT 3:** [NPS 10-932-Application for Special Use Permit filming/Still Photography \(Long Form\)](#)

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<sup>1</sup> This replaces obsolete application forms formerly found on pages A13-22 through A13-28.

**RM-53 SPECIAL PARK USE**  
**FILMING AND PHOTOGRAPHY**  
**ADMINISTRATIVE RECORD CHECKLIST**

**APPENDIX 13**  
**EXHIBIT 4**  
**PAGE A13-29**

**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

**RM-13 SPECIAL PARK USE**  
**FILMING AND PHOTOGRAPHY**  
**ADMINISTRATIVE RECORD CHECKLIST**

**APPENDIX 13**  
**EXHIBIT 4**  
**PAGE A13-30**

\_\_\_\_\_ 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.

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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:

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- 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.

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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-

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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.]*

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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, or 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.

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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.

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(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.

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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



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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 comply with any fire restrictions that may be in place at the time of permitted activities.

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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.

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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.

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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

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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

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- 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.



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**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 arm 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.

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**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 shoot 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.

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**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.

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**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