

REFERENCE MANUAL 41: WILDERNESS STEWARDSHIP
Procedures for Managing Filming and Still Photography Activity in
NPS Wilderness

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Recommendation and Approval for Inclusion in Reference Manual 41

Recommended by the WASO Wilderness Stewardship Division:

Signature: _____

Title: Wilderness Stewardship Division Program Manager

Concurrence by the WASO Regulations and Special Park Uses Division

Signature: _____

Title: Regulations and Special Park Uses Division Chief

Approval for inclusion in Reference Manual 41 by WASO Visitor and Resource Protection:

Signature: _____

Title: Associate Director, Visitor and Resource Protection

SECTION 1: BACKGROUND AND PURPOSE

Filming and still photography activities are common in many NPS wilderness areas. Some of these activities, depending on the number of persons or type of equipment involved, have the potential to adversely impact wilderness character. To ensure preservation of wilderness character, these should be properly evaluated and may be subject to a special use permit, along with appropriate terms and conditions.

In 2013 the NPS published *Director's Order 41*, § 7.3 (Commercial Services), which directed parks to manage commercial filming and photography activities in wilderness as a “commercial service” in accordance with a special provision in the Wilderness Act ([16 U.S.C. 1133 \(d\)\(5\)](#)) that established “commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.”

The direction previously provided in *Director's Order 41* and *Reference Manual 41* resulted in a standard practice where a commercial use authorization (CUA) was required for all approved commercial filming activities. The criteria applied for evaluating commercial filming requests were based on the content and purpose of the filming activity, and approval was contingent on ensuring that the content and purpose directly related to recreational or other wilderness purposes. This placed superintendents in a difficult position of evaluating the content of the film and the intent and judgment of the filmmaker. In cases where the content or purpose of the proposed activity did not directly relate to wilderness purposes, CUAs were typically denied. However, the NPS reconsidered its treatment of commercial filming considering filmmaking’s protection under the First Amendment of the U.S. Constitution, and to eliminate any question as to whether NPS’s regulation of it is content-neutral. And, on January 3, 2025, the President signed the Expanding Public Lands Outdoor Recreation Experiences (EXPLORE) Act into law, which provides that the receipt of monetary compensation by the person conducting filming or still photography activity shall not affect the permissibility of the activity.

Accordingly, the NPS amended [Director's Order 41, § 7.3](#) (Commercial Services) and sections of Reference Manual 41 to be more consistent with the First Amendment and to remove any question concerning content-based restrictions on protected speech. Specifically, amendments were made to clarify that neither filming nor photography will be considered a commercial enterprise for the purposes of the Wilderness Act, but that where those activities require a permit under Federal law, they will be evaluated through a minimum requirements analysis. This clarification is consistent with the Wilderness Act because neither filming nor photography involve the sale of any products or services within wilderness. They also do not involve the extraction or manipulation of wilderness resources for the purpose of generating revenue and do not involve charging an entry or participation fee for an activity occurring within wilderness.

Additionally, amendments were made to remove all statements that commercial filming is a commercial service and to affirmatively state that filming and commercial photography are not commercial services. Language in paragraphs that previously dictated how superintendents were to analyze requests to conduct commercial filming in wilderness was also removed. These changes refocus the evaluation of proposals to film in wilderness on the potential for those activities to impact wilderness character, which is consistent with the evaluation of other proposed activities in wilderness, and not on the subjective intent of the filmmaker. Unlike a vendor conducting a business within wilderness, the activity associated with filming or photography has only a temporary footprint in wilderness, and that temporary footprint may be no different than that of ordinary visitors using their phones or commercially available equipment to take personal videos and photographs during their visits to park areas. During or after their visits, the resulting videos or photographs may be shared on social media, printed for home use, sold, or even deleted.

Further, the NPS amended *Director's Order 41*, § 7.3 to remove a statement that commercial still photography activities that include the use of models, sets, or props, or promote a product or service are prohibited in wilderness. This statement is inconsistent with [54 U.S.C. § 100905](#), which governs the NPS's authority to regulate still photography in units of the National Park System. When permits may be required for still photography, they can be denied only if specific criteria are met. These criteria make no reference to still photography activities that use models, sets, props, or promote a product or service and therefore there is no basis to categorically prohibit them in System units. Thus, the Director's Order was amended to be consistent with applicable law, *54 U.S.C. § 100905*.

Finally, to further clarify the meaning of “commercial service” and “commercial enterprise” under the Wilderness Act, definitions for these terms have been established in [Reference Manual 41, § 3.1 National Park Service Wilderness Definitions](#). *Reference Manual 41, § 7.3 Extent Necessary Determination Process for Commercial Services* was also amended consistent with the above guidance.

The purpose of this policy is to implement the amendments to *Director's Order 41*, § 7.3, and to provide guidance as to the application, evaluation, and permitting procedures for filming or still photography activity in NPS wilderness areas in order to minimize impacts to wilderness character as a result of such First Amendment protected activity.

SECTION 2: PERMIT REQUIREMENTS

The NPS may require a permit for filming or still photography activity if the activity fails to meet one or more of the requirements that are stated in *54 U.S.C. § 100905*.

For proposed filming or still photography activity in wilderness, the NPS must consider whether the activity would involve uses prohibited under Section 4(c) of the Wilderness Act or otherwise have the potential to impact wilderness character. Examples of activities with the potential to impact wilderness character that may or may not involve a prohibited use include:

- Activities in an area with rare or sensitive plant communities or critical wildlife habitat may adversely impact the natural quality of wilderness character.
- Activities that use artificial lighting or artificial sounds may adversely impact park visitors' sense of solitude and the presence of natural soundscapes.
- Activities involving a large crew size may create sights and sounds that adversely impact park visitors' sense of solitude.
- Activities that use or place props or models may interfere with park visitors' ability access and enjoy popular scenic vistas and recreational destinations.
- Activities in a location or feature that is sacred or culturally sensitive to may adversely impact the other features of value quality of wilderness character and values of great importance to indigenous peoples.

Additional guidance about issuing permits for filming and photography is provided in the [NPS Special Park Uses SharePoint Site](#).

SECTION 3: FILMING OR STILL PHOTOGRAPHY ACTIVITY EVALUATION PROCEDURES

When a permit is required for filming or still photography activity and that activity will take place in wilderness, the request shall be evaluated through a minimum requirements analysis (MRA). The NPS has a legal responsibility to preserve wilderness character within designated wilderness areas (*16 U.S.C. 1133(b)*). This responsibility also applies to areas identified as eligible, proposed, recommended, and potential wilderness in accordance with [NPS Management Policies 2006, § 6.3.5](#). This responsibility is achieved by ensuring that all actions that may involve a prohibited use in wilderness and/or have the potential to adversely impact wilderness character, including filming or still photography activity, are evaluated through a minimum requirements analysis (MRA) process (see Section 4 for more details).

An MRA is a documented, two-step process that first determines whether an action is necessary for administration of the area as wilderness, and if so, identifies the method or tool to accomplish the action with the least adverse impact on wilderness character. NPS policies regarding the MRA process are well-established in Management Policies 2006 § 6.3.5 and Director's Order 41 § 6.4 and MRAs serve as the interagency standard for wilderness compliance within the National Wilderness Preservation System.

MRA Step 1: Step 1 of the MRA process determines whether it is necessary to grant a permit to conduct filming or still photography activity within wilderness. The first thing that needs to be accomplished is the drafting of an issue statement. When responding to a request for a permit for filming or still photography activity in wilderness the issue to be analyzed in the MRA should be identified as the NPS's need to respond to a request for a permit to film or photograph in wilderness. The issue statement should also specifically identify what the applicant has requested to do in wilderness, including the location of the filming or still photography activity, the number of persons to be involved in the project or on site, the activities or amenities requested, a general description of the equipment to be used, and any proposed activities or uses prohibited by Section 4(c) of the Wilderness Act.

Next, consider whether options to conduct the requested activity exist outside of wilderness. Here, the NPS may suggest locations outside of wilderness that may be suitable for the activity for which the permit was requested. The NPS should also explain the differences between activities allowable outside of wilderness, compared to the restrictions on activities in wilderness, including the prohibited uses in Section 4(c) of the Wilderness Act. If the filmmaker or photographer agrees to conduct the filming or still photography activity outside of wilderness, a MRA is not required. However, if the filmmaker states that the filming or still photography activity must take place in wilderness or in a specific area of wilderness then the NPS must conclude that there are no suitable locations to fulfill the request outside of wilderness and move forward with completing the MRA for the proposed activity.

There are four criteria for determining necessity: (A) wilderness character; (B) valid existing rights; (C) special provisions of wilderness legislation; and (D) requirements of other federal laws. In determining whether criteria (A) apply you are asked to determine whether any of the five qualities of wilderness character would be degraded, impaired, or threatened to a degree that it is necessary to analyze potential actions otherwise prohibited by Section 4(c) to address the issue, or whether action is necessary to preserve one or more of the qualities of wilderness character. When applied to filming and still photography, criteria (A) may apply if the purpose and content of a project, without any modification, would promote the values or public purposes of wilderness. If you think criteria A applies, you should analyze its applicability on the basis of the content of the permit application, rather than asking for additional information about the content of the filming or still photography activity for which a permit is required. Examples of films that could meet criteria (A) would be an informative video regarding leave no trace principles, or a film that explains the public purposes of wilderness. Under criteria (B), filming or still photography activity would be necessary if there was a valid existing right, however this criterion does not apply as there are no valid existing property rights associated with filming in wilderness. If a park's wilderness legislation applies to the request for filming or still photography activity in wilderness, then criteria (C) could apply.

If neither criteria (A) or (C) apply, which will be true in most cases, use criteria (D) – Requirements of Other Laws or Legal Directives. Filming and still photography are protected activities under the First Amendment to the U.S. Constitution. Because wilderness is not a public forum, the regulation of filming or still photography activity within wilderness is subject to a reasonableness standard. Decisions as to whether to permit filming or still photography, where a permit is required, and decisions as to the terms and conditions to be included in a permit, must be reasonable. In making these decisions, wilderness managers must not discriminate against applicants on the basis of the filmmaker's or photographer's viewpoint or the content of the filming or still photography activity; instead, wilderness managers will use Step 2 of the MRA process to determine whether the requested activity may be permitted, or whether modifications to the requested activity are necessary to mitigate impacts to wilderness character.

For requests to conduct filming or still photography in wilderness, the applicable law is *54 U.S.C. § 100905*. The requested activity may be necessary if, after completing the analysis in Step Two, none of the criteria for denial in *54 U.S.C. § 100905* are met. These denial criteria include circumstances in which it is determined that the activity would:

- Cause resource damage;
- Unreasonably disrupt or conflict with the public's use and enjoyment of the site;
- Pose health or safety risks to the public;

When evaluating whether any of these criteria for denial have been met, wilderness managers may consider whether the activity would violate the Wilderness Act (16 U.S.C. §§ 1131-1136).

MRA Step 2: Step 2 considers a range of possible (and feasible) alternatives the related requested filming or still photography in wilderness, including an option of granting what is requested in the permit application with no changes. This alternative must be considered even if it is not a selectable alternative because it would violate the Wilderness Act's prohibitions on structures, installations, motor vehicles, mechanical transport, motorized equipment, motorboats or landing of aircraft in wilderness areas (*16 U.S.C. § 1133(c)*), or because the impacts to wilderness character are too great. The other alternatives considered will not involve prohibited uses and should consider other terms and conditions necessary to limit impacts to wilderness character and to the wilderness experience of other visitors, including potentially limiting crew size and equipment, sets, and props.

The NPS will identify the alternative that best preserves the qualities of wilderness character and will identify the alternative selected. If the permittee will agree to an alternative that would not involve prohibited uses, that alternative may be selected, even if it is not the alternative that best preserves wilderness character if it mitigates the impacts to wilderness character to an acceptable level. Describe the activities in the selected alternative in a special use permit issued to the

permittee that contains enforceable terms and conditions that protect wilderness character consistent with the MRA. The permit issued will include specific terms, conditions, and special provisions to ensure the protection of park resources and visitors and the preservation of wilderness character.

SECTION 4: FILMING OR STILL PHOTOGRAPHY ACTIVITY PERMITTING PROCEDURES

Upon approval of an MRA that determines a proposed filming or still photography activity is necessary in NPS wilderness, a special use permit shall be issued, along with appropriate terms and conditions. Examples of activities or uses that may be prohibited or restricted in the permit terms and conditions to ensure the preservation of wilderness character include but are not limited to the following:

- Use or possession of any prohibited uses identified in Section 4(c) of the Wilderness Act, *16 U.S.C. § 1133(c)*;
- Crew/group size;
- Manipulation of natural or cultural resources;
- Use of artificial sounds and/or lighting;
- Use of models or props;
- Access (temporal or spatial) to sensitive natural resource areas (e.g., wetlands); and,
- Access (temporal or spatial) to sensitive cultural resources areas (e.g., Native American sacred sites).

Specific terms and conditions should be clearly stated on the permit and all permit holders shall be held accountable for compliance with them.

APPENDIX A: MINIMUM REQUIREMENTS ANALYSIS OUTLINE

STEP 1: DETERMINE IF ADMINISTRATIVE ACTION MAY BE NECESSARY

Issue Statement: *The issue statement should describe in general terms the issue that may require some action in wilderness. The issue may be a problem, situation, opportunity, or other circumstance that requires consideration. It is not a proposed action, tool, or solution. When a the NPS has received a request for a permit for filming or still photograph activity in wilderness, the issue statement should frame the issue as follows: describe the request including the location where the applicant seeks to film or photograph, the crew size, and the equipment sought to be used, as well as any other activities ancillary to the filming or still photography activity that may impact wilderness character.*

Options Outside of Wilderness: *Can the issue be resolved or addressed outside of wilderness? This section should describe any locations that suggested to the applicant outside of wilderness that, based on the information presented in the permit, could have been suitable for the requested activity. However, if the permittee states that they need to film in a certain wilderness area, then there are no suitable locations to fulfill the request outside of wilderness.*

Criteria for Determining Necessity: *Do any of the criteria below apply?*

A. Wilderness Character: *Based on the Issue Statement, would any of the qualities of wilderness character (untrammeled, undeveloped, natural, solitude or primitive and unconfined recreation, other features of value) be preserved by taking or evaluating further action? Wilderness character ordinarily will not apply but may apply if the purpose and content of a project, without any modification, would promote the values of wilderness. Consult your regional wilderness coordinator before finding that a permit is necessary under Criteria A.*

B. Valid Existing Rights: *Valid existing rights typically would not apply to requests for permits to conduct filming or still photography activity.*

C. Special Provisions of Wilderness Legislation: *Is action necessary to satisfy a special provision in wilderness legislation (i.e., Section 4(d) of the [Wilderness Act](#) of 1964 or subsequent wilderness enabling laws) that requires action? This will ordinarily not apply. Consult your regional wilderness coordinator before finding that a permit is necessary under Criteria C. If applying criteria C to a permit request, cite any applicable law and quote the special provision.*

D. Requirements of Other Federal Laws or Legal Directives: *Not including special provisions found in wilderness-enabling laws, does another Federal law or legal directive (e.g., Park enabling legislation, treaty, executive order, secretarial order, court order, or other*

legally binding agreement with federal, state, tribal, or local agencies or authorities) require action? Because filming and still photography are protected First Amendment activity, requests to permit such activities will be evaluated with respect to their impacts on park resources, including the qualities of wilderness character, and not based on the viewpoint of the filmmaker or photographer or content of the proposed filming or still photography activity. [54 U.S.C. § 100905](#) should be cited.

STEP 1: DETERMINATION – IS ADMINISTRATIVE ACTION NECESSARY

The permit will be found necessary if the permit applicant has agreed to restrictions that are protective of wilderness character, and if none of the criteria for denial in 54 U.S.C. § 100905(d) have been met. In such cases, include the following statement:

“Under 54 U.S.C. § 100905, the requested activity, as modified by restrictions to mitigate impacts to park resources, including wilderness character, that are included in the permit, is necessary. The permittee has agreed to restrictions on the activities within wilderness that are protective of wilderness character. As a result, none of the criteria for denial in the 54 U.S.C. § 100905(d) are met.”

STEP 2: DETERMINE THE MINIMUM ACTIVITY

Other Direction: *Has filming or still photography activity been specifically addressed in one or more of the following: NPS policy, superintendent's compendium, wilderness stewardship plan, standards that have evolved for the use and preservation of the park, wilderness character narrative, wilderness character change or trend reports, general management plan, foundation document, legal directive, or other binding agreement with federal, state, or local agencies or authorities? Describe if applicable.*

Uncontrollable Timing Requirements: *What, if any, are the considerations that would dictate timing of the action?*

Workflow Components: *What are the distinct components or phases of the action? Examples of components related to climbing opportunities include but are not limited to: Access (ingress) to the filming or still photography area, conducting the filming or still photography activity, exit (egress) from the filming or still photography area.*

STEP 2: ALTERNATIVES

Establish Alternatives: *This section will include the alternative of granting what is requested in the permit application with no changes and other alternative(s) that mitigate impacts on wilderness character and do not involve prohibited uses. Only include feasible alternatives in this section. Some alternatives that are not feasible may warrant documentation in the "Alternatives Considered but Dismissed" section to provide a brief description and explanation of why it was dismissed and not considered in detail. A "no action" alternative need not be considered for permit requests to conduct filming or still photography activities.*

Describe Alternatives: *What are the details of each alternative? When, where, and how will the action occur? What mitigation measures will be taken? Provide a complete narrative description of the Component Methods identified above. How will each of the components of the action be performed under each alternative?*

Wilderness Character: *What is the effect of each component method on each of the qualities of wilderness character? Consider changes, trends and cumulative impacts in each quality identified through wilderness character monitoring programs and other forms of inventory, monitoring, and documentation. What mitigation measures will be taken?*

- **Untrammelled:** *Explain the effects from any actions that would intentionally control, manipulate, or hinder the conditions or processes of ecological systems.*
- **Undeveloped:** *Explain the effects to this quality in terms of how "the imprint of man's work [would] remain substantially unnoticeable" and how wilderness will continue to*

contrast with other areas of “growing mechanization. Important note: motorized equipment would constitute a negative impact on the undeveloped quality.

- **Natural:** *Explain the effects to this quality in terms of protection, degradation, or restoration of natural conditions. Important note: Indicators for the natural quality include plants, animals, air and water, and ecological processes.*
- **Solitude or Primitive and Unconfined Recreation:** *Explain the effects on opportunities for visitors to experience solitude or a primitive and unconfined type of recreation. As appropriate, describe solitude, primitive recreation, and unconfined recreation separately.*
- **Other Features of Value:** *Explain the effects to features that are of scientific, educational, scenic, or historical value that are not accounted for in the above qualities, including cultural and paleontological resources that are integral to wilderness character. Important note: This quality includes features of significant importance to a variety of user groups, including historical and indigenous use, sacred and spiritual sites, burial areas, archeological artifacts, and other cultural resources.*

Alternatives Considered but Dismissed: *Identify feasible alternatives, if any, that were considered but dismissed? Why were they dismissed? Explain that the option of not issuing the permit is not considered because if the permittee will agree to the mitigations required, then it is necessary to issue the permit and the option of not issuing the permit is not a feasible alternative.*

STEP 2: DETERMINATION – WHAT IS THE MINIMUM ACTIVITY?

Selected Alternative or combined components of different alternatives: *Identify the selected alternative (or components of different alternatives) and explaining the rationale for the selection. Include a comparison of the selected alternative with other alternatives.*

Prohibited Uses: *The selected alternatives will not include any prohibited uses found in Section 4(c) of the Wilderness Act, 16 U.S.C. § 1133(c).*

Mitigation Measures, Monitoring & Reporting Requirements: *Describe if appropriate.*

STEP 2: REVIEW AND APPROVAL

Name of Project or Issue: *Insert*

Review and Approval dates and Signatures: *Insert*