

·How do I answer all the questions'?

Name and Address - Include the full name(s) to be used. If the application includes real property, the name(s) on the legal document must match the application.

Applicant's Agent - This person must be at least 21 years old and may or may not be the same as the applicant. Documentation should be included to verify that this person may sign on behalf of the applicant.

Project Description - Include enough detail to enable the Forest Service to determine feasibility, environmental impacts, benefits to the public, the safety of the request, lands to be occupied or used, and compliance with applicable laws and regulations.

Environmental Protection Plan - Include proposed plans for environmental protection and rehabilitation during construction, maintenance, removal, and reclamation of the land.

Map - Provide a detailed map (U.S. Geological Survey quadrangle or equivalent) or plat (survey or equivalent) showing the requested use in relation to NFS land, identification of applicant's property (if applicable), scale, map legend, legal description, and a north arrow.

Technical and Financial Capability - Provide documentation to assure the Forest Service you are capable of constructing, operating, maintaining, removing the use off NFS land, and reclaiming the land after the authorization terminates.

Alternatives - You must first consider using nonfederal land. Lower costs or fewer restrictions are not adequate reasons for use of NFS lands. Provide alternative locations for the proposal in your application.

·What does an authorization cost?

Rental Fee - This is an annual rental fee based on the fair market value for the uses authorized and is payable in advance. Fees are established by appraisal or other sound business management principles.

Other Associated Costs - You may be responsible for providing information and reports necessary to determine the feasibility and environmental impacts of your proposal; compliance with applicable laws and regulations; and terms and conditions to be included in the authorization.

2. Rural Utilities Service (RUS)

The RUS does not, to my knowledge, manage any federal lands. They do, however, provide funding for telephone service. One of the RUS new initiatives for **2001** was the "Local Dial-Up Internet Program." I include reference to the RUS here as a possible source of funding for the installation of broadband services in rural areas that qualify under the Rural Utilities Service guidelines.

C. Department of the Interior

1. Bureau of Land Management

The Bureau of Land Management has the following information available on their website:

RIGHTS-OF-WAY

Each year hundreds of individuals and companies apply to the BLM for rights-of-way (ROW) on or across public lands. A ROW grant is an authorization to use a specific piece of public land for specific facilities for a specific period of time. Currently the vast majority of the ROWs granted are authorized by Title V of FLPMA (43 U.S.C. 1761-1771) and the Mineral Leasing Act (Section 28 of the Mineral Leasing Act of 1920, as amended, 43 U.S.C. 185). It is the policy of the BLM to authorize all ROW applications at the discretion of the authorized officer in the most efficient and economical manner possible.

FLPMA Rights-of-Way: As authorized by the Federal Land Policy and Management Act (FLPMA), BLM will issue ROW grants for electrical power generation, transmission and distribution systems, systems for the transmission and reception of electronic signals and other means of communications, highways, railroads, pipelines (other than oil and gas pipelines) and other facilities or systems which are in the public interest.

On February 24, 2001, the issued Instruction Memorandum No. 2001-080. The subject of this memorandum is "Rights-of-way (ROW) for Fiber Optic Uses - Interim Policies and Procedures for Application Processing, Rental Determination and Administration." The Purpose of this Instruction Memorandum was to establish interim policies and procedures for processing and authorizing fiber optic ROW applications across public lands. The memorandum specifically states:

Policy/Action:

A. Interim Policy: The Bureau of Land Management (BLM) will assess a rental fee for fiber optic ROW projects based upon the current linear ROW rent schedule, as adjusted **annually** (43 CFR 2803.1-2), until new rental regulations for fiber optic projects can be implemented through a formal rulemaking process. Standard Stipulation No. 3 on the ROW grant form (Form 2800-14) will however continue to provide for adjustments of rent at the time that any new rental regulations are implemented and should be retained in all fiber optic ROW grants. In the interim, BLM will authorize and administer fiber optic projects, including rent determination, in accordance with this Instruction Memorandum.

Fiber optic projects, by their nature, can have a variety of owners and/or separate telecommunication service providers. Project proponents often find it economically beneficial to design and construct a fiber optic project with excess capacity (fibers, cables, conduits, and other equipment beyond the proponent's own needs which can be sold or leased to other parties). These additional users must each have their own authorization from BLM or the original ROW

grant must include a subleasing provision that authorizes additional use(s) as the need arises (43 CFR 2801.1-1(f)).

A subleasing provision included in the ROW grant would accommodate any change in the ownership of any portion of the project, and/or the subleasing of excess space or equipment to additional providers. These additional telecommunication service providers lease excess space (and/or equipment) from the primary project owner and holder of the ROW authorization. With a subleasing provision included in the original authorization, any additional telecommunication providers would not be required to obtain a separate grant for their use. However, the holder of the ROW remains liable for compliance with the terms/conditions of the grant by all parties using the fiber optic facility.

Owners and telecommunication service providers may also sublease to a customer for that customer's own internal communication needs. A customer is not selling or providing a communication service to others, and would therefore never need a separate authorization from the BLM.

An inventory of re-generation equipment can assist in distinguishing between "owners", "telecommunication service providers" and "customers". "Owners" and "telecommunication service providers" would typically have their own, separate, regeneration equipment, housed in their own building, to service their own equipment and business needs. In some cases, the holder will lease excess rack space in a re-generation facility to accommodate the re-generation equipment of an additional telecommunication service provider. "Customers" would not have separate re-generation equipment for their use. Field Offices (FO) should periodically inventory re-generation stations and equipment to help determine the number of separate owners and/or third-party telecommunication service providers for a particular fiber optic project, to assist in management of the right-of-way authorization.

B. New Authorizations

1. Preferred Authorization: Issue a single ROW grant with subleasing provision.

Because of the many benefits which subleasing provides to the BLM and the ROW holder, it is the preferred policy of BLM to issue a single ROW grant (Form 2800-14), with a subleasing, provision, for all new fiber optic projects. Grants would include, but are not limited to, the following terms and conditions:

a. A provision to allow subleasing of space/equipment to additional telecommunication providers without further approval from the BLM. Subleasing includes any change in ownership of any portion of the project, or the subleasing of space to additional telecommunication service providers. These additional telecommunication providers will not be required to obtain a separate grant for their use. No additional rent will be assessed to the ROW holder for the additional sublease owner(s) or telecommunication provider(s) within the project or facility. The

holder is liable and responsible for compliance with all terms/conditions of the grant, including compliance with the terms/conditions by any additional user.

b. **A** provision which obligates the holder to notify BLM of any change in the future ownership status of the fiber optic project, or the subleasing to separate telecommunication service providers.

c. **A** ROW width that adequately accommodates the project, but not less than 10 feet.

d. **A** ten year maximum term.

e. **A** provision to **allow** the BLM to adjust the rent, consistent with regulations and rental schedules. Standard Stipulation No. 3 (RENTAL) on Form 2800-14 provides for such an adjustment and should be retained in all ROW grants.

f. Collection of an advance annual (or other term as specified in the grant or via regulatory provisions) rent that is determined by using the existing linear rent schedule. The ROW grant will be issued as an actual rent **grant**, and not as an "estimated rent" grant.

The holder will be assessed an annual rent that is determined by using the existing linear rent schedule found at 43 CFR 2803.1-2(c). The authorized ROW area shall include an appropriate width to accommodate the construction, operation/maintenance and termination of all components of the project, including **all** conduits, marker poles, maintenance stations, in-line amplifiers, and re-generation facilities. **A** short term ROW grant may be issued to accommodate temporary construction activities.

g. The holder must amend the ROW grant **at** any time additional land, equipment, and/or new uses are proposed which are beyond the scope of the existing authorization.

2. Importance of the pre-application meeting with the fiber optic project proponent(s).

FO's must explain to the proponent the financial obligations associated with processing a ROW application, and the potential monitoring costs and rental obligations if the application is approved.

3. ROW Application Requirements

The fiber optic project proponent must submit a **completed** application on Standard **Form 299** in accordance with the provisions contained in 43 CFR 7802.3 and 2802.4. The project proposal must specifically describe in detail (preferably in a Plan of Development) the components of the fiber optic facility and/or system, including but not limited to, the size, number, and type of conduits, **innerducts**, cables, and fibers. The proposal must include a specific description (by project segment) of the number of fibers in each conduit or **innerduct**, and the use (commercial, public purpose, or internal) and ownership of fibers (via a fiber content map). If the ROW is

granted. it must contain a stipulation or provision which requires the holder to provide an updated fiber content map (including the number of active and installed but inactive fibers) on an annual basis. Finally. the project proposal must describe all ancillary components, including but not limited to. re-generation stations (number of individual sites and individual re-seneration facilities at each site. distance between sites. access and power requirements, fencing needs, etc.), in-line amplifiers. fiber-splicing vaults (man-holes and/or hand-holes), and warning markers.

4. Alternative Authorization: Issuance **of** a new ROW grant without a subleasing provision.

For administrative efficiencies, issuance of one ROW grant per fiber optic project (with subleasing provisions) as described above, is BLM's preferred policy. However, BLM, at its discretion and at the request of the proponent/applicant, may issue a ROW grant for a fiber optic project without subleasing provisions. If only one entity is involved. BLM shall condition the grant and inform the applicant **of** the following:

a. Future desires to sublease any portion of the fiber optic project must be approved in advance by BLM.

b. The ROW grant will require an amendment to authorize any future subleasing.

c. All amendments to the ROW grant will be subject to cost recovery fees.

d. In lieu of an amendment that provides for subleasing, each additional owner and/or telecommunication senice provider must obtain their own separate authorization which would be subject to rent based upon the current linear rent schedule. **A** proposed new owner would also need to submit a request and receive BLM approval for a full or partial assignment of the grant from the original ROW holder.

For multiple-owner projects that do not desire the subleasing provision, individual ROW **grants** without a subleasing provision can be issued to each separate owner **or** telecommunication senice provider involved in the project in order to accommodate the needs **of** that specific business transaction. When one project has two **or** more ROW grants to accommodate different ownership entities or telecommunication service providers, rent is assessed to each holder based upon the existing linear rent schedule.

C. Existing Authorizations

1. Single Owner Projects Authorized Without Subleasing Provisions.

Many **of** the existing fiber optic projects that BLM has authorized to date have not included a subleasing provision which allows additional users without BLM approval. Rent has been assessed based on the existing linear rent schedule. Some of these existing authorizations were issued subject to an "estimated rent", again based upon the current linear rent schedule. Any

ROW grant with an "estimated rent" provision must be revised to eliminate the "estimated rent" provision. In addition, any future request by the holder to accommodate either additional owners **or** telecommunication service provider(s), must be approved by BLM and authorized by either:

a. Issuance of a separate ROW grant to each new owner(s) or telecommunication service provider(s), or

b. Amending the original grant to allow for "subleasing" of equipment and space within the authorized facilities. If the grant is amended to provide for subleasing, the holder must agree to notify BLM of any change in the ownership status of the fiber optic project, or whenever space has been subleased to additional telecommunication service providers.

2. Multiple Owner Projects Authorized Without Subleasing Provision.

a. Infrequently, ROW grants are held jointly by two or more entities, but the holders would be considered a single entity for rental determination purposes. For example, Companies A, B, & C may own equal shares of a ROW project and hold the ROW grant "jointly" **or** "in common". While each company is individually liable and responsible for compliance with all terms and conditions of the ROW authorization, for rental determination purposes, treat the grant as a single, one-entity authorization and establish rent by using the current linear rent schedule.

b. Instead of one ROW grant held in "joint ownership", companies may have been issued their own ROW grant for that portion of the project that they have an ownership interest. In these cases, use the current linear rent schedule to determine rent for each authorization holder.

D. Installation within an Existing Transportation or Utility ROW Authorization: BLM will issue a new ROW grant when a fiber optic use is proposed for installation within an existing transportation or utility ROW authorization (including Federal Aid Highway projects), unless the authorization provides for the subleasing of new uses (specifically fiber optic uses) without additional approval.

However, no approval or authorization is necessary from BLM for any new use (including fiber optic projects) proposed within a pre-Federal Land Policy Management Act (FLPMA) railroad ROW (Reference Solicitor's Opinion, M-36964, and memo to State Offices dated July 7, 1999, from the Assistant Director, Minerals, Realty and Resource Protection).

Whenever a pre-FLPMA railroad ROW becomes abandoned and the ROW reverts to public land status, non-railroad uses also terminate. Therefore, existing non-railroad **uses** previously authorized by the holder of the railroad grant must be re-authorized by BLM.

E. Installation of a Fiber Optic Project on Existing or with Existing and/or Proposed ROW Facilities (whose primary use is something other than fiber optic telecommunications): BLM will encourage holders of existing ROWs, to the greatest extent practical, to accommodate the placement of fiber optic projects within their ROW.

BLM will also encourage fiber optic project proponents/applicants to locate, to the greatest extent possible, their fiber optic project within existing ROWs.

Fiber optic projects to be installed on an existing (or proposed) utility structure whose primary use is something other than fiber optic telecommunications (i.e., electrical transmission power line or a pipeline for petroleum products, etc.) will require a separate ROW grant for the fiber optic use. The grant shall include a subleasing provision and be issued subject to rent as explained in Section B. above. The ROW width for the fiber optic project can vary from that of the primary use, but can not be less than ten feet. The term of the authorization for the fiber optic ROW grant will not exceed 10 years.

F. Authorization, Construction and Installation of **Empty** Fiber Optic Conduits: A fiber optic project that is authorized and/or constructed with empty conduits (no fiber optic cables) is considered a single line when determining rent under the existing linear rent schedule. Rent is determined in accordance with Section B. above.

G. Application of Policy to Holders Exempt From Rent: All holders who utilize fiber optic lines for commercial purposes are subject to rent in accordance with the existing linear rent schedule, unless they are specifically exempted from rent by statute or regulation, including facilities that **are** eligible for financing pursuant to the Rural Electrification Act of 1936, as amended (43 U.S.C. 1764 and 43 C.F.R. 2803.1-2(b)(1)(iii)).

Rent-exempt holders who lease/sell excess capacity for commercial purposes to other telecommunication service providers that are not exempt from rent by statute or regulation, lose their exemption for that portion of the fiber optic project being sold or leased for the commercial purposes. Given this exception, rent is determined in accordance with Section B. above.

H. Interagency Projects: Many of the major fiber optic projects being proposed to the BLM and the Forest Service (FS) include lands administered by both agencies. When such a fiber optic project is proposed, both agencies have typically collaborated and agreed upon a lead agency. The lead agency processes the application and oftentimes authorizes the project. This is a sound management practice that shall continue. FO's shall continue to make the lead agency determination based upon the nature of the project, its impact to the land and resources, issues or concerns about the proposal, availability of resources to process the application, and customer service to the applicant. (**Refer** to BLM Manual 2801.35B.1.f. (Coordination) for further guidance on determination of a lead agency).

Until a fiber optic rental regulation is adopted, the BLM and the FS have agreed that the **land use** rent for interagency projects will be determined in accordance with the existing linear ROW rent schedule found at 43 CFR 2803.1-2 (c).

I. Alternative Rent Determinations: The BLM will not apply the criteria found at 43 CFR 2803.1-2(c)(1)(v) to deviate from the current linear rent schedule in favor of an appraisal or other method to determine rent. However, many companies have indicated that they prefer to

make a one-time rent payment rather than annual payments. To accommodate these requests, the BLM will consider alternative methods to establish fair market value rent, but only when requested by the applicant and approved by the BLM.

The applicant may request **an** appraisal to establish fair market value rent for a fiber optic project, subject to the following terms and conditions:

1. BLM and the applicant must jointly agree to establish rent via an appraisal.
2. **An** appraisal provided by the applicant must be approved by the BLM.
3. **An** appraisal provided by the BLM must be accepted by the applicant.
4. All BLM appraisal and review work must be funded by the applicant via cost recovery.
5. Once an acceptable rent has been determined, the applicant can choose to pay the rent on a one-time basis for the term of the grant; or as otherwise provided by regulations.
6. Rent established by **an** appraisal (or by negotiations based on relevant market data) will be considered actual rent **for** the full term of the grant.
7. Once a revised rental schedule is adopted by regulation for fiber optic uses, it can not be applied to ROW grants where actual rent has been paid for the full term of the grant.

J. Rent Reduction and Appeal Rights: With the concurrence of the State Director, the authorized officer may reduce rent when it is determined that payment of full rent will cause undue hardship on the holder/applicant and that it is in the public interest to reduce said rental. This "hardship" provision is found at 43 CFR 2803.1-2(b)(2)(iv). Appeal rights (under 43 CFR part 4) are available to all holders whose rent is determined by the existing linear rent schedule.

K. LR2000 Notations: A new commodity code (972) has been established to identify ROW uses for fiber optic facilities and to track these uses within LR2000. Please refer to WO Instruction Memorandum No. 2000-171, dated August 4, 2000, for guidance on the use of this new commodity code.

Timeframe: This **IM** is effective upon receipt.

Budget Impact: The application of this policy will have a minimal impact on budget and workload. The current linear ROW rental fee schedule will continue to be used, until new rental regulations are developed and implemented through a formal rulemaking process. However, there is a positive impact through the implementation of consistent procedures in the processing of fiber optic rights-of-way under existing regulations.

Background: The Bureau of Land Management (**BLM**) is receiving, processing and authorizing a growing number of proposals for the installation of fiber optic telecommunication **lines** across public lands. **As** a result of this ongoing activity, a number **of** questions have been raised by FO's regarding the authorization and administration of ROW applications and grants for fiber optic projects, and specifically, the determination and assessment of appropriate rent.

A growing volume of data indicates that the market value of fiber optic ROWs may exceed the annual land use rental rates in the existing linear ROW rent schedule found at 43 CFR 2803.1-2(c). In the last year or so, the BLM has routinely authorized projects and assessed an "estimated" rent, based upon the current linear rent schedule, while awaiting development of internal policy or regulations which would establish a rent schedule for fiber optic projects. Recently, BLM made an agreement with Congressional leaders that any new rent schedule for fiber optic uses would only be established via the regulatory process with full public participation.

It is to the benefit of both the BLM and the FS, as well as the customers we serve, that consistent policies and procedures be developed for the authorization and administration of fiber optic projects now located or proposed to be located on both the public lands and National Forest System lands. The BLM and FS have thus agreed to conduct a market study of fiber optic uses, with the objective of establishing a market based schedule of rates and/or methods that can be easily and consistently used by field managers in determining and assessing a fair market rent for fiber optic projects.

Manual/Handbook Sections Affected: BLM Manual 2801, ROW Management and Handbook H-2801-1, is affected by this IM and policy.

Coordination: The development of this policy was coordinated within the Department, and at the Director and Assistant Director level. BLM State Office and FO were contacted for input. Considerable Congressional interest has been expressed regarding the development of fiber optic ROW policies and numerous briefings of Congressional staff has been facilitated by the BLM Washington Office (WO). Legislative Affairs staff.

Contact: Any questions concerning the content of this IM should be directed to the WO, Lands and Realty Group (WO-350) and the attention of Ron Montagna, at (202) 452-7782 or Bill Weigand, at (208) 373-3862.

This memorandum is available on the BLM website at the following internet address: <http://www.blm.gov/nhp/efoia/wo/fv01/im2001-080.html>. This memorandum expires on September 20, 2002.

In summary, the BLM has a current rent schedule that applies specifically to fiber optics. It is Appendix A.

2. Bureau of Reclamation

The Bureau of Reclamation has similar requirements for the installation of fiber optics - yearly "fee" based upon the fair market value of the land in the easement or right-of-way; and the initial costs of the department paid for by the permittee. More information is available at the Bureau of Reclamation's web site.
Bureau of Reclamation

In response to the question. "What is the Bureau of Reclamation'?. the Bureau of Reclamation responds with the following answer found at the Bureau of Reclamations web site located at <http://www.usbr.gov/main/what/index.html>:

Established in 1902, the Bureau of Reclamation is best known for the dams, power plants, and canals it constructed in the 17 western states. These water projects led to homesteading and promoted the economic development of the West. Reclamation has constructed more than 600 dams and reservoirs including Hoover Dam on the Colorado River and Grand Coulee on the Columbia River.

Today, we are the largest wholesaler of water in the country. We bring water to more than 31 million people, and provide one out of five Western farmers (140,000) with irrigation water for 10 million acres of farmland that produce 60% of the nation's vegetables and 25% of its fruits and nuts.

Reclamation is also the second largest producer of hydroelectric power in the western United States. Our 58 power plants annually provide more than 40 billion kilowatt hours generating nearly a billion dollars in power revenues and produce enough electricity to serve 6 million homes.

Today, Reclamation is a contemporary water management agency with a Strategic Plan outlining numerous programs, initiatives and activities that will help the Western States, Native American Tribes and others meet new water needs and balance the multitude of competing uses of water in the West. Our mission is to assist in meeting the increasing water demands of the West while protecting the environment and the public's investment in these structures. We place great emphasis on fulfilling our water delivery obligations, water conservation, water recycling and reuse, and developing partnerships with our customers, states, and Indian Tribes, and in finding ways to bring together the variety of interests to address the competing needs for our limited water resources.

As with the other federal agencies, permits for easements and right-of-way are authorized in various titles and sections of the Code of Federal Regulations. The Bureau of Reclamation has manuals and directives that provide the governing rules and regulations.

One of the directives and standards deals with Land Use Authorizations. This documents stated purpose is to "provide standard procedures for issuing use authorization documents such as easements, leases, licenses, and permits which allow others to use Reclamation lands and interests in its lands, facilities, and water surfaces."

Section 3 subsection G covers Commercial Telecommunications. This section covers the implementation of the Telecommunications Act of 1996. This section refers back to the General Services Administration (GSA) Bulletin, Federal Property Management Regulations (FPMR) D-242. As with other federal land easements or other land use permits, the fee is determined on the fair market value, unless there is a competitive bid process. In general, the term of the permit or easement is to be no longer than 25 years. Easements are only used when some lesser use for authorization, like a lease, license or permit does not suit the purpose of the applicant.

Easements should only be granted for uses which require an "interest in land" and will not interfere with other projects. Leases are used for such activities as grazing, agriculture, research, recreations, and concessions. The majority of applicants will be issues permits and licenses. Section 7 – Permit/License states, "Construction or placement of transmission ~~or~~ distribution lines, access roads, trails, pipelines, power lines, telephone lines, and other facilities involving installation or construction of longer-term capital improvements are the types of uses authorized through a longer term license." Section 7 further states, "All licenses, including permits, should be limited to a period of 25 years or less."

Section 9 – Use Authorization Fees and Financial Management states, "All use authorizations involving Reclamation acquired or withdrawn lands have a land use value (referred to as "value of rights-of-use" in 43 CFR Section 429) and an administrative cost." The monies received by Reclamation for the land use values are also referred to as land use fees and are considered "incidental revenues ...the administrative costs are those direct and indirect costs associated with approving and administering the use authorization."

The Bureau of Reclamation Directives and Standards LND 05-01, which "sets forth appraisal procedures and standards to ensure compliance with Federal authorities, establishes directives and standards for written appraisals, and provides a system for resolution of appraisal problems and issues."

In conclusion, once a permit has been granted, there is the ongoing fee for the use of the land, using the fair market value to determine that fee, and there is also the initial expenditure for the recovery of the administrative costs.

The following is from the Bureau of Reclamation's web site at the following web address: <http://w.lc.usbr.gov/lg2000/flands.html>

Land Operations and Realty

The Land Operations and Realty program supports the Reclamation mission by acquiring and administering land that is needed to allow construction and operation of Reclamation facilities including dams, canals, power plants, reservoirs, pumping plants, underground pipelines, electrical transmission lines, office buildings, and other supporting and related structures and facilities.

When projects are transferred to other entities, or retired and dismantled, Lands disposes of unneeded property.

Major Lands Function: Acquisition, Administration, Recreation, Land Disposal, Land Records, and More About Recreation.

Acquisition

All projects and facilities require land on which to construct and maintain works and facilities. Projects may require large blocks of land, or small linear rights of way, and usually a combination of many types of land and land interests. Lands may be acquired from private owners and states, or in the western states, from the Federal public domain lands. Acquisition of

land by Reclamation and other Federal agencies is highly regulated and tightly controlled. to ensure proper use of Federal funds and fair treatment of landowners.

A recent need has developed for Reclamation to acquire environmental mitigation lands. These lands, rather than being used directly for construction of facilities, are acquired and set aside and preserved for their natural values, often wildlife habitat. Preservation of these lands is needed to allow Reclamation to comply with laws like the Endangered Species Act, to offset possible environmental impacts of traditional water and power projects.

Administration

Good business practices - and Federal law - require that Reclamation-owned lands be properly managed. This requires continual inventory and inspection of lands. Reclamation must also protect and administer many resources on the lands, including wildlife, forest products and other vegetation, valuable minerals, cultural and historic properties, among others. This involves ongoing work to protect lands from erosion, wildfire, and other threats.

A major and growing problem on Reclamation lands, especially in areas near rapidly growing urban and suburban areas, is trespass. Trespasses from minor refuse dumping to encroachment of fences and buildings to serious illegal toxic waste dumping can be seen on lands throughout Reclamation's systems. Protection of lands from damage and trespass, and clean-up and rehabilitation of damaged lands is an increasing demand on Reclamation's resources.

Non-Reclamation project uses are third party needs for use of Reclamation lands.

For example, authorization of a highway **right of way** crossing a Reclamation owned canal. Reclamation makes every attempt to accommodate the needs of the public and local communities for use of Reclamation lands, so long as the use would not damage project facilities. Reclamation routinely issues permits, rights of way, leases, and other rights of use for a multitude of uses. Proper management of these activities requires a broad mix of technical specialists, including realty specialists, appraisers, land surveyors, inspectors, engineers, and cartographers.

Recreation

Many Reclamation facilities, especially reservoirs, provide excellent opportunities to provide public recreation opportunities and development. Reclamation projects have resulted in *the* creation of **hundreds** of facilities throughout the West such as campgrounds, picnic areas, **boat** ramps, hiking and biking trails, wildlife observation areas, and other amenities. Generally, Reclamation seeks out local government partners, such as state and county park departments, to operate these facilities on a concession basis, which significantly reduces administration costs for the Federal government. In other cases, Federal agencies such as the US Forest Service or National Park Service administer recreation use of Reclamation projects.

Land Disposal

Lands no longer needed for project purposes are identified for disposal. Reclamation sometimes sells land itself, but often **works** with the General Services Administration (GSA) to dispose of surplus lands through GSA processes. In some cases, Reclamation lands originally withdrawn from the public domain are returned to other Federal land managing agencies holding adjoining lands, or certain lands may be transferred to state or local agencies, if appropriate.

Reclamation in recent years has placed emphasis on transferring some entire projects to the local entities (usually irrigation or water districts) which operate them, a process referred to as "Title Transfer." In these cases, ensuring that the transfer documents adequately protect both the transferee entity and the Federal government requires the work of many experienced lands professionals and attorneys.

Land Records

Perhaps the single most significant functional responsibility of the Lands Operations and Realty program is the creation, maintenance, and protection of accurate, detailed land records. The failure to maintain good land records can result in inefficient administration and slow response to public demands, at best. At worst, it can jeopardize the integrity of vital water projects and result in untold unnecessary costs to the Federal government through imperfect title and tort liability costs. Reclamation maintains hundreds of thousands of land records spanning almost a century of water development in the West. These records were generally in traditional paper media. Many are deteriorating rapidly due to age, and some have been lost or damaged to the extent they must be recreated, a costly and time-consuming process. Reclamation has been working hard in past years to protect the information in these records, and to make it more accessible, through use of electronic information management technology. These new records media include computer database systems for storing text and tabular data, graphic systems for storing images of original documents, and geographic information systems (**GIS**) for storing map-based data.

D. National Park Service

Here are the regulations for special use permits in the national park system. Of special note is that no permits are given for areas designated wilderness. Once again, a permit is required and a yearly fee is assessed based upon fair market value. The cost for the implementation **of** the permit is also required - the permittee must pay the administrative costs involved with issuing the permit.

DIRECTOR'S ORDER #53: SPECIAL PARK USES

Approved: /s/ Robert G. Stanton (signed original on file)
Director, National **Park** Service

Effective Date: April 4, 2000
Sunset Date: April 4, 2004

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1. INTRODUCTION

A special park use is a short-term activity that takes place in a park area and:

- 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.

The approval or denial of requests to engage in special park uses is an important and continuing responsibility of superintendents. Superintendents should be aware that local decisions related to permitting special park uses may have Service-wide implications, and set precedents that create difficulties for other superintendents. In such instances, the superintendent should consult with the regional or Service-wide specialist.

A special **park** use may involve either rights or privileges, and may ~~or~~ may not support the purposes for which a park was established. In either case, whether the request is approved or denied, the superintendent's decision must be able to withstand review, challenge and litigation. Whether the request is approved or denied, the superintendent's decision must be consistent with service-wide

policies and consistent with decisions made on both a park and on a service-wide basis. The judicial standard of review is whether the decision is "arbitrary and capricious."

A special park use does not include any activity managed under the Concessions Management Improvement Act of 1998 (16 USC 5901), any recreation use covered by section 4 of the Land and Water Conservation Fund Act (16 USC 4601-6a), any recreation use covered by the Recreational Fee Demonstration Program (16 USC 3601-6a Note), any leasing activity pursuant to the National Historic Preservation Act (16 USC 470h-3), or Section **802** of the National Parks Omnibus Management Act of **1998** (16 USC 1a-2(k)).

2. AUTHORITIES

2.1 The authority to issue this Director's Order is contained in 16 USC 1 through **4**, and in delegations of authority contained in Part 245 of the Department of the Interior Manual.

2.2 The 1916 NPS Organic Act and a **1978** amendment to the NPS General Authorities Act place limits on the kinds of activities that may be allowed within the National Park System. The most important provisions read as follows:

[The National Park Service] shall promote and regulate the use of the [national parks] by such means and measures as conform to the fundamental purpose of the said parks 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 USC 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 USC 1a-1).

These provisions of law place obligations on the National Park Service to manage use of park areas in a manner that will protect against the impairment or derogation of park resources, values and purposes.

2.3 Superintendents must be able to cite a specific right or statutory authority to allow a special park use. Rights may include those granted under the Constitution, **or** through treaty or property entitlements. Statutory authorities include general statutes (e.g., 16 USC 1), or a park-specific statute. In addition **to** rights or statutory authorities, managers must also consider Executive orders, regulations, and case law **to determine whether** a proposed activity or special **park use** is allowed. **Examples** of authorities **most** frequently cited for special park uses are:

16 USC 1 - 4, for general uses

16 USC 5 and 79, for rights of way

Examples of authorities for charging fees and recovering costs related to special uses are:

16 USC **3a.** for cost recovery
31 USC 9701, for fee collection
(See also section 10.1.)

3. POLICY GUIDANCE

Primary policy guidance on special park uses is contained in section **8.6** of NPS Management Policies. That guidance is summarized in, and supplemented by, this Director's Order.

3.1 General. The National Park Service may permit a special park use 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 concessioners 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. Existing activities that do not meet these conditions must be phased out.

3.3 Mandatory or Discretionary. Some special park uses are specifically authorized in a park area's enabling legislation, which may indicate that permitting is mandatory ("The Secretary shall permit ..."), or discretionary. ("The Secretary may permit ..."). In either instance, the proposed use is considered to be both authorized and appropriate, as long as adequate safeguards are established to protect park resources, values, and visitors.

3.3 Right or Privilege. A superintendent must determine whether a request for a special park use is prohibited or mandated, or involves a right or a privilege. A right is based on property ownership, legislative or treaty entitlement, or Constitutional guarantee. Where none of these factors is present, the use is a privilege over which the superintendent may exercise varying degrees of discretion and control. Generally speaking, citizens must be afforded the opportunity to exercise their rights; however, a superintendent may establish permit conditions to protect park visitors, park resources and values. When *considering a privilege*, the superintendent has the additional task of determining whether the activity will be allowed.

3.4 Compliance. The decision to issue or deny a permit for a special park use flows from the appropriate compliance under the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act of 1966 (NHPA), and other applicable laws. For example in the case of NEPA, if the proposed special use is not covered by a categorical exclusion, the superintendent, in preparing an EA or

EIS, is responsible for identifying reasonable alternatives, both inside and outside the park, and completing appropriate compliance documentation. Although the superintendent may require the applicant to prepare this documentation, the NPS remains responsible for its content. Regardless of who prepares compliance documents, the applicant is responsible for paying all NPS costs incurred in meeting NEPA and 106 compliance requirements.

3.5 Permit Terms and Conditions. Superintendents will establish permit conditions that protect NPS and public interests, including park resources and values. Special park uses may be authorized for a period of not-to-exceed 5 years. Rights-of-way are addressed separately and may be issued for longer than 5 years. (See Section 10.)

3.6 Permit Fees and NPS Cost Recovery. Except as identified in Section 3.7 below, the NPS will charge fees and recover costs for special 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 use requested. The fair market value of a special park use is the value of the lands or facilities used, plus the NPS costs incurred in managing or supporting the use. The NPS will retain funds recovered for the cost of managing a special **park** use. Charges arising from the use of NPS lands and facilities must be deposited in the U. S. Treasury, unless otherwise specifically authorized by law.

When special use permit fees are proposed to be increased, the superintendent will notify the permittee and/or the public of the increase at least sixty (60) days prior to the fee changes taking effect. (See 3.12 below. See also Reference Manual 53 Chapter 10.)

3.7 Permit Fee Waivers. A waiver from the requirements to charge permit fees and to recover costs may be appropriate when:

Charging and collecting are not cost-effective:

A waiver is considered an appropriate courtesy to a foreign government or international organization;
The permittee is a state, local, or Federal agency or Native American tribe or group; or
The superintendent determines that the proposed use will promote the mission of the NPS or promote public safety, health, or welfare.

3.8 Recreation Fees and Non-Recreation Uses. 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; filming activities; NPS authorized research; Federal, state **and** local government business; and outings conducted by schools and other bonafide educational institutions for educational purposes.

3.9 Fees Charged by Permittee. A permittee, while on park property, may not collect admission or any other money associated with a special event. All permittee monetary transactions must take place outside the park.

3.10 Donations. The NPS has 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 superintendent's decision to issue or deny a permit, nor may it 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 superintendent must refrain from discussing the donation until after the permitted activity is completed. Superintendents may not accept donations in lieu of recovering costs.

3.11 Administrative Record. Superintendents must develop an appropriate administrative record to support their decisions. The information must be in writing and, depending on the sensitivity of the matter, contain the dates, discussions, and rationale involved in the decision process and the determination of all fees. In addition, the administrative record must contain all letters, compliance documentation, notes, and other documents related to the issuance of the permit, including a copy of the executed permit. Permits issued without fees or cost recovery will be retained in the park files for 1 year and 1 day following expiration of the permit. Permits issued with fees or cost recovery will be retained in park files for 6 years and 3 months following expiration of the permit.

3.12 Renewals. 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 in Reference Manual 53 Chapter 8 should be used for this purpose.

4. PERMITTING INSTRUMENTS

4.1 There are two instruments that may be used to authorize a special park use: (1) a Special Use Permit, or (2) a Right-of-way Permit.

(1) Special Use Permit. Instrument issued by a superintendent to an individual or organization to allow the use of NPS-administered resources and to authorize activities in 36 CFR Parts 1 - 7 that require a permit. (See Reference Manual 53.)

(2) Right-of-way permit. Instrument issued by a regional director to authorize any new utilities, including water conduits, on NPS lands. This includes those utilities not owned by the NPS, but serving the NPS and/or NPS concession facilities.

Superintendents may, as appropriate, renew, amend, or convert other documents to right-of-way permits for existing utilities. Right-of-way renewals and conversions may be signed by the superintendent.

NPS-owned utilities **do** not require a right-of-way 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.

When the right-of-way permit format prescribed by Reference Manual 53 is used without substantive changes, it does not require further review by the Solicitor.

4.2 Other Permits. NPS issues other permits and signed agreements, including but not limited to research, collection, and use of natural and cultural resources. Requirements for these permissions are found in other Director's Orders and related Reference Manuals (such as DO #24 NPS Museum Collections Management, DO #28 Cultural Resource Management, and DO #77 Natural Resources).

5. PERMITTING AND RENEWAL CONSIDERATIONS

5.1 Reasons for Issuing a Permit. There are three primary reasons for issuing a permit, regardless of type:

To impose conditions to manage the activity and prevent impairment or derogation of resources, values, and purposes for which the park was established:

To obtain the signature of the permittee agreeing to the conditions and other statements contained within the document: and

To establish a written account of the special use for inclusion in the administrative record.

5.2 Basic Requirements. To receive consideration, a proposal to engage in a special park use must be submitted in writing; be consistent with applicable legislation. Federal regulations and administrative policies: avoid visitor use conflicts; and should not create unacceptable impacts to park resources. (See 3.1.)

5.3 Administrative Record. 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 a rationale for the approval of each special park use request 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.

5.4 Flow Chart. Superintendents must follow the "Flow Chart For Special Park Use Initial Requests" (see Reference Manual 53 Chapter 8) to ensure that **all** requirements of law, regulation, and NPS policy are addressed. Any special park use that is approved must be documented in writing, have a specific date for expiration, contain safeguards for the protection of the park's resources and values, and have an adequate administrative record.

5.5 Termination. Occasionally, activities or uses that passed an initial evaluation are no longer permissible. If a previously-permitted activity is found to be without legal authorization, or is judged to be no longer appropriate and compatible with current policy or the purposes of the park and additional stipulations would not mitigate enough to make it appropriate, it must be terminated.

6. PERMIT PROVISIONS

Superintendents will ensure that measures to protect the United States' interests are incorporated into permits for special park uses. **To** ensure this protection, superintendents will include in each permit issued some, or all, of the following items, depending on the activity. (The following items, however, may not be imposed on First Amendment activities.)

6.1 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 permittee's activities. **An** amount adequate to cover the cost of restoration, repair, rehabilitation and cleanup of the area may be required. Should resource damage beyond that envisioned by the original performance bond result from the permittee's use, the park may file suit against the permittee under the authority of 16 U.S.C. 19jj, Park System Resource Protection.

6.2 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.

6.3 Property Insurance. Adequate property insurance coverage should be required whenever Federal buildings and/or facilities are being made available pursuant to a permit.

6.4 Hold Harmless/Indemnification. This is a legal statement intended for use 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.

6.5 Ton 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 occupancy of NPS property by the other agency, it might be used for other purposes.

6.6 Anti-Deficiency Act. This statement protects the NPS against claims arising from an executed Agreement, which would be in excess of the fiscal year appropriation for that agreement.

6.7 Bankruptcy Termination. While this statement is primarily aimed at a-micultural 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.

7. NATIVE AMERICAN RIGHTS

The NPS, to the extent consistent with each park's legislated purposes, will develop and execute its programs in a manner that reflects knowledge of and respect for the cultures - including religious and subsistence traditions - of Native American tribes or groups with demonstrated ancestral ties to particular resources in parks.

The NPS will be as unrestrictive as possible in permitting Native American access to and use of traditional sacred resources for customary ceremonials, provided that such use does not cause derogation of the resources.

The NPS will permit members of Native American tribes or groups to have access to park areas to perform traditional religious, ceremonial, or other customary activities at places that have been used historically for such purposes. 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.

8. 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.

8.1 General. Freedom of speech, the 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, in order to protect **park** resources, the NPS may regulate certain aspects of First Amendment activities, such as the time when, the place where, and the manner in which they are conducted. NOTE: 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 addressed later in this Director's Order. NPS regulations pertaining to First Amendment activities are found at **36** CFR 2.51 and 2.52, or at 36 CFR 7.96(g) for designated park units in the National Capital Region.

8.2 Religion. The First Amendment also 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, in the same way as the Service would permit the exercise of any other First Amendment activity.

8.3 **Equal** Protection. The principle of equal protection, guaranteed by the due process clause **of** the Fifth Amendment, provides that, to the extent any particular activity is **permitted**, similar First Amendment activities may not be excluded. 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 conduct while prohibiting others under similar circumstances. Superintendents must be

particularly careful to be neutral in *their* judgment, and not to favor organizations with which they are personally familiar, or whose "message" they privately support.

8.3 Political Events. Political events may be either First Amendment activities or special events. Typical examples of First Amendment events include public demonstrations, assemblies, or other forms of public expression of opinions and views. Examples of non-First Amendment events include political fund-raisers and other by-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, superintendents must take into consideration whether or not the activity would be permitted if requested by any other group.

9. WATER RIGHTS

Special park uses may involve the use and/or conveyance of water. Water law, both Federal and state, governs the manner, timing, and amount of use that any party, including the National Park Service, may make of any water body, including both surface and ground water. If a water use is not authorized under either Federal, state, or common law, then such use will not be permitted in an NPS unit.

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 very limited circumstances.

Specific guidance on the sale or lease of services, resources, or water available within an area of the National Park System is available from the Water Resources Division, Water Rights Branch.

(See also Director's Order #35: Sale or Lease of Services, Resources, or Water.)

10. RIGHTS-OF-WAY

10.1 Authorities. The NPS may issue right-of-way permits only for those uses **or** activities specifically authorized by Congress and only if there is no practicable alternative to such use of *NPS* lands. Authority for a utility Right-of-way (ROW) through parks is found in 16 USC 5 for radio, television and other forms of communication transmitting and receiving structures, facilities and antennas (including telecommunication antenna sites); and 16 USC 79 for electric power, telephone and telegraph lines, and a wide variety of water conduits (including sewer); or in a very few cases, park-specific legislation.

Guidance *for* authorizing roads and highways in NPS areas is found in Director's Order #87. Authority for highways that are part of the Federal Aid Highway System is found at **23 USC 317**. Authority for permitting access to in-holdings in Alaska park units was granted by Public Law 96487, title XI, §1110(b)(16 USC 3170(b)) .

Examples of uses for which there are no general authorities are roads that are not a part of the Federal Aid Highway 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 USC 1-3, but these lines may not be extended to serve any other purpose. If authority for a requested use is not found in general or specific legal authority, the park must deny the use. Should an unauthorized right-of-way already exist, the park should contact the regional program manager for resolution.

10.2 Regulations. NPS general regulations regarding ROW permits are located at 36 CFR ~~Part~~ 14. The regulations for NEPA Section 102 and NHPA compliance are located at 40 CFR Part 1500 and 36 CFR Part 60. 63 and 800. Alaska-specific regulations on ROW's and NEPA compliance are located at 43 CFR.

10.3 Telecommunication Antenna Sites. Director's Order 53A, 'Wireless Telecommunications,' is hereby rescinded and replaced by the applicable provisions of this Director's Order. The NPS will comply with the Telecommunications Act of 1996 and any other policies, requirements, or instructions that are applicable to the Service. In complying, superintendents will:

Encourage preliminary meetings with telecommunication industry companies who wish to discuss pending or proposed applications for sites in the park to explain park concerns and understand industry timeframes.

Encourage meetings with the applicants during the post application decision process as necessary, but especially if the manager is considering denying the application. Such meetings should take place prior to written notification of denial.

Consider the safety of the visiting public when reviewing telecommunication site applications, including the potential benefit of having telephone access to emergency law enforcement and public safety services.

Ensure that, when an application is submitted, the park replies in writing within 10 business days with an initial response on the application, and that response will be 'yes' (probably a known categorical exclusion requiring very minor additional information to be submitted), 'no' (with reasons in writing), or 'maybe' (with additional information to be submitted).

Ensure that, to the extent possible, the timeline and detailed steps enumerated in Reference Manual 53 are followed and the permit is issued or denied.

Ensure that compliance actions and reviews will be conducted expeditiously and consistent with all applicable statutes.

A telecommunication use is considered a utility and, like other utilities on NPS lands, **will** be authorized using the right-of-way permit process described in Reference Manual 53. 16 USC 5 will be used **as** the authority to permit telecommunication antenna sites.

10.4 Wilderness. Except as specifically provided by law, there will be no permanent road, structure or installation within any study, proposed, recommended, or designated wilderness area. This includes the

installation of utilities. (See the Wilderness Act 16 USC 23). The NPS will not issue any new right-of-way permits or widen **or** lengthen any existing rights-of-way in study, proposed, recommended, or designated wilderness areas. (See also Director's Order #41: Wilderness Preservation and Management)

11. AGRICULTURAL USE

Special Use Permits (SF 10-1 **14**) will be issued only for agricultural activities which meet defined objectives of restoring or perpetuating human-influenced landscapes identified in NPS planning documents. If a desired agricultural use is not specifically authorized in a park's enabling legislation, a superintendent may issue an agricultural permit under 16 USC 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 impair or derogate 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.

12. DOMESTIC LIVESTOCK MANAGEMENT

12.1 General. Each park that allows livestock use, including parks where livestock is managed by other agencies, will develop a livestock management plan. The NPS will allow livestock use only when the use is:

Specifically authorized by a park's enabling legislation or other legislation; **or**

A reserved right **of** use arising from the acquisition of a tract of land; or

Required in order to maintain a historic scene; or

Conducted as a necessary and integral part of a recreational activity appropriate to the park.

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, livestock use that depletes or degrades non-renewable resources, **or** whose effects cannot be mitigated, will not be allowed.

The use of pack-in feed--preferably pellets--is encouraged for all pack and saddle stock while on the trail, and is required whenever grazing would have adverse impacts on a park's resources. When not actively engaged in recreational activities, pack and saddle stock will either be removed from the park or be confined within an appropriate corral or other structure, and fed pelletized feed or hay that is free of weed seeds.

12.2 Permitting Instruments. Grazing activities that are allowed will be conducted only pursuant to the terms **and** conditions of a special use permit, property lease, concessions 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.

(See Director's Order #38: Property Leasing; also Director's Order #77 and Reference Manual 77-3 for livestock management requirements. Also see sections 8.6.8--Domestic and Feral Livestock Management, and 4.4.10—Exotic Species, in NPS Management Policies.)

13. SPECIAL EVENTS

13.1 General. Special events are activities, such as sporting events, pageants, regattas, public spectator attractions, entertainment, ceremonies, large group camps, or rendezvous, which **fall** under the category of privileges. Special events differ from public assemblies and public meetings in that the latter activities are rights protected by the First Amendment.

A superintendent is required to apply the criteria spelled out at 36 CFR 2.50, or, for the designated park units in the National Capital Region, the special regulations at 36 CFR 7.96(g)(4)(vi). These regulations authorize 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

The superintendent has issued a permit.

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, 36 CFR 2.50 requires that a permit be denied if, in the superintendent's opinion, the special event will:

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** concessioners or contractors; or

Present a clear and present danger to public health and safety; or

Result in significant conflict with other existing uses.

It is the Service's intent to apply these criteria in a manner that will make the permitting process more uniform Service-wide, reduce the possibility of superintendents denying permits without **good** cause, and result in the timely processing of permit requests.

(See also Management Policies 8.6.1: and see 36 CFR 7.96(g) for special considerations applicable to the National Capital Region.)

13.2 Political Events. Political events may be First Amendment activities or special events. First Amendment activities of this nature **are** public demonstrations, assemblies, or other forms of public expression of opinions and views (see section 8.4). Examples of special events in the same vein are political fundraisers and other invitation-only political events not normally open to the general public.

13.3 Sale of Food or Merchandise. **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. Sales operations are restricted to indoor facilities specifically designated for use by concessioners and cooperating associations for that purpose.

The sale of printed material in connection with a special event or First Amendment activity is allowed, but only as provided in 36 CFR 2.52. or in 36 CFR 7.96(k).

The NPS places significant restrictions on the sale of items in connection with a special event. The sale of food is allowed only when the sale: (1) does not conflict with the activities of an NPS concession, (2) is managed under a permit, and (3) is conducted in compliance with Director's Order #83: Public Health. The sale of T-shirts, clothing, arts and crafts, and any other merchandise in connection with a special event or a First Amendment activity is prohibited.

13.4 Fireworks Display. Fireworks displays are not permitted in natural parks. In other **parks**, such displays must be approved by the superintendent, following consultation with the Regional Safety Officer.

14. FILMING AND PHOTOGRAPHY

As with any other request for a special park use, filming and photography activities may be permitted only when they meet the criteria listed in section 3.1. If those criteria are met, then the following policies and procedures apply.

14.1 Permits Requirements. The Special Use Permit (Form 10-114) is the instrument used to authorize filming or photography in NPS areas.

A permit is required for any filming or photography that:

involves the use of a model, set, or prop; or
requires entry into a closed area; or
requires access to the park before or after normal working hours.

A permit is not required for:

A visitor using a camera and/or a recording device for his/her own personal use and within normal visitation areas and hours; or

A commercial photographer not using a prop, model, or set, and staying within normal visitation areas and hours; or

Press coverage of breaking news. This 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 resources or values.

14.2 Other Considerations

A superintendent will not sign a location release supplied by an applicant.

A superintendent may request a credit line, provided that the content or subject matter of the filming project would not reflect adversely on 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.

The NPS will not censor the content of any filming 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 help determine whether:

A credit line would be appropriate; or

It would be appropriate for the NPS to actively assist a filming activity or authorize use of the arrowhead symbol.

(See Reference Manual 53 for more details.)

15. EXPIRED RESERVATIONS OF USE AND OCCUPANCY

Generally, the NPS, when it purchases properties, will remove any encumbering structures and restore the sites for park purposes. Superintendents may not extend use and occupancy reservations. However, they may either: (1) issue a lease (see Director's Order #38: Property Leasing), or (2) issue a SUP for temporary residency in an NPS structure at market rental rate, provided a determination has been made that:

It is in the best interest of the park and the United States; and

The use will not result in impairment or 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 residency would create an undue hardship on the occupant and the structure has served as the occupant's primary residence.

The permittee will reimburse the park for all costs associated with issuing and managing the permit, and will be charged a fee for the use of the facility, resource, or property based upon comparable prices in the local market (fair market value). The SUP does not grant any interest in the land. (See Reference Manual 53, Appendix 14.)

16. SPECIAL CONSIDERATIONS FOR NPS UNITS IN ALASKA

16.1 General. NPS Special Park Use policies are generally applicable to national park units in Alaska. However, in addition to the statutory authorities, regulations, cost recovery and policy directives discussed in this Director's Order and Reference Manual 53, superintendents must be familiar with the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and its implementing regulations. They must also be aware that, in addition to compliance with applicable laws such as NEPA and NHPA, any action to permit the use of public land will require an evaluation of the effect on subsistence uses that are authorized by section 810 of ANILCA.

16.2 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. Approval of a TUS requires an existing statutory authority (just as it does elsewhere in the National Park System). If there is no existing authority, new legislation will be necessary if the requested use is to be authorized.

16.3 Access to In-holdings. Section 1110(b) of ANILCA requires the Secretary to give in-holders 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. Section 1110(b) is an authority for granting access to in-holdings in Alaska units. Under Department of the Interior regulations (43 CFR 36.10), in-holders must apply for a right-of-way permit using Standard Form-299 or a mining plan of operation in order to receive access rights.

16.4 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 home sites.

16.5 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.

16.6 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.

17. SCIENTIFIC RESEARCH AND RELATED COLLECTING

17.1 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. Instead, these activities are governed by Scientific Research and Collecting Permits. 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 Natural Resources Reference Manual 77: Director's Order 74: Scientific Research and

Collecting; and Director's Order 78: Social Science (note: some of these documents may not be completed as of this date). Additional guidance may be obtained from regional science advisors or from the Associate Director, Natural Resource Stewardship and Science.

17.2 Archeological Research in NPS Areas. Research **must** be conducted in accordance with the terms and conditions of a Federal Archeological Permit, Form DI-199 **1**. Any archeological research conducted on park lands **must** be consistent with applicable statutes, regulations, policies, standards, and guidelines.

Permits issued to non-NPS researchers for archeological research on park lands must comply with regulations contained in **43** CFR Parts 3 and 7.

-----_End of Director's Order-----

DIRECTOR'S ORDER #41: WILDERNESS PRESERVATION AND MANAGEMENT

Approved: /s/ Robert Stanton
 Robert Stanton, Director

Effective Date: August 2, 1999

Sunset Date: August 2, 2003

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A. INTRODUCTION

The purpose of Director's Order #41 is to provide accountability, consistency, and continuity to the National Park Service's wilderness management program, and to otherwise guide service wide efforts in meeting the letter and spirit of the 1964 Wilderness Act. This Director's Order will clarify, where necessary, specific provisions of National Park Service Management Policies; and will establish specific instructions and requirements concerning the management of all National Park Service wilderness areas.

Director's Order #41 should be applied to management actions carried out within the framework of a park's general management plan, the Government Performance and Results Act, a park's natural and cultural resources plans, and the park's wilderness management plan.

It is important to note that policies may in some instances be superseded by statutory provisions that apply to individual wilderness areas, by rights reserved by former landowners and, in Alaska, by applicable provisions of the Alaska National Interest Lands Conservation Act (ANILCA).

B. INSTRUCTIONS AND REQUIREMENTS

In keeping with the principles of management accountability, the National Park Service will apply the following requirements to its wilderness preservation activities. For the purpose of applying these requirements, the term "wilderness" includes the categories of "suitable," "study areas," "proposed," "recommended," and "designated."

1. Reference Manual. The **July** 1999 edition of Reference Manual #41: Wilderness Preservation and Management is hereby approved for release as a supplement to this Director's Order. The Associate Director for Park Operations and Education is authorized and required to maintain **and** update the manual to provide comprehensive guidance on wilderness preservation and management. The reference manual will include applicable policies and Director's Orders; an assessment of the critical issues in wilderness preservation and management, with instructions on how these issues will be managed; minimum content requirements for wilderness management plans; and other information that will help field managers and staff meet their responsibilities.

2. National Wilderness Steering Committee. The Associate Director for Park Operations and Education may establish a National Wilderness Steering Committee to promote consistency and improvement in National Park Service wilderness stewardship, and to initiate interagency wilderness coordination. The Committee will provide the Directorate with recommendations and advice to establish accountability, consistency, and continuity within the Service's wilderness management program and will function until such time as the Directorate determines that it is no longer needed.

3. Management Responsibility and **Accountability**. Park managers will ensure that wilderness resources are afforded maximum protection through implementation of the **following** actions addressing the NPS wilderness accountability and responsibilities defined in Chapter 6 Wilderness Preservation and Management policies. (Reference Manual #41: Appendix C provides a checklist for these items)

a. Complete Wilderness Identification and Designation Process.

(i) Wilderness Suitability Assessments. A wilderness suitability assessment must be completed for all lands to determine suitability for inclusion within the National Wilderness Preservation System no later than one year after NPS acquisition.

(ii) Wilderness Studies. Formal studies of lands identified as suitable for wilderness must be completed within five years of the wilderness suitability assessment. (See also 36 CFR Subpart A Part 19)

(iii) Wilderness Proposal/Recommendation: Wilderness designation proposals will be forwarded to the Director immediately upon completion of the formal Wilderness Study for review and approval. The Director will, in a timely manner, forward the Wilderness Proposal and a recommendation to the Assistant Secretary and Secretary of the Interior for approval. Managers will track and know the status of their wilderness designation proposals.

(iv) Wilderness Designation Process: After the Secretary has forwarded the Recommendation to the President, and the President has transmitted the Recommendation to Congress, the National Park Service will track the status of the Recommendation as it progresses in the designation process.

b. Complete Wilderness Management Planning

(i) Wilderness Management Plan. Park superintendents with wilderness resources will prepare and implement a wilderness management plan or equivalent integrated into an appropriate planning document (see Reference Manual #41: Appendix D). An environmental compliance document, in keeping with NEPA requirements, which provides the public with the opportunity to review and comment on the park's wilderness management program, will accompany the plan.

(ii) Wilderness Management Plan Coordination. The goals and objectives of the wilderness management plan will be effectively coordinated with other park management documents (e.g. General Management Plan, Strategic Plan, Annual Performance Plan, and other operational plans such as the Fire Management Plan, and Natural and Cultural Resources Management Plan).

c. Establish Wilderness Management **Accountability.** Wilderness management accountability will be established through completion of the following:

(i) Critical Results for Wilderness Stewardship. Regional Directors will include a statement on wilderness management in the "Critical Results" element of the Employee Performance Plan and Results Report (Form DI-2002) for the superintendent of each area containing wilderness resources. Documentation of

these critical results will clearly identify and ensure appropriate focus on their wilderness management responsibilities.

(ii) wilderness Responsibilities in Position Descriptions. All positions having significant wilderness responsibilities will be supported by position descriptions that describe these responsibilities.

(iii) Wilderness Integrated Into KSA's . Wilderness will be effectively integrated into the Knowledge, Skills, and Abilities requirements for all vacancy announcements for positions having significant wilderness responsibilities.

(iv) Wilderness Training for Key Staff. Each key person responsible for the management and protection of wilderness resources will receive the wilderness training necessary to ensure awareness, knowledge of, and accountability for, their specific wilderness responsibilities.

(v) Wilderness Referenced in GPRA Strategic Plan. Wilderness stewardship responsibilities will be referenced in the park's strategic plan developed pursuant to the Government Performance and Results Act.

(vi) Annual Report To Congress. Parks with wilderness resources will provide the Associate Director for Park Operations and Education with the information necessary to prepare the annual Report to Congress required by Section 7 of the Wilderness Act.

d. Administer and Protect the Wilderness Resource. Stewardship responsibilities for wilderness will be completed through the following:

(i) Responsible Persons and/or Organizations. Key park staff who have direct responsibility for the development, coordination, implementation, and accountability for the park's wilderness management program will be designated and identified. The responsible individual/organization may be the line officer, interdivisional committee, wilderness coordinator/manager, or other.

(ii) Minimum Requirement Process. A process to determine the "minimum requirement" for administrative actions, proposed special uses, scientific activities, and equipment use in wilderness will be identified and established. It must specify how the process is to be implemented in the park and that a record of the decisions generated *through* this process must be kept for **public** inspection.

(iii) Wilderness Management Plan Implementation: Progress will be made annually in implementing approved actions and activities in the wilderness management plan.

(iv) Suitable Study Area Proposed and Recommended Wilderness Preservation. Lands identified as being suitable for wilderness designation, wilderness study areas, proposed

wilderness, and recommended wilderness (including potential wilderness) will be managed to preserve their wilderness character and values undiminished until Congress acts on the recommendations. Decisions will be made in the expectation of eventual wilderness designation.

(v) Legal Description and Boundary Map Completion. Every park with designated wilderness must possess a written legal description of the wilderness area and a map (or maps) that depict that legal description. Parks that have not yet done so, will complete a wilderness legal description and map(s) no later than eighteen months from the date of issuance of this Director's Order. All parks containing wilderness will ensure that the legal description and map are filed in the appropriate NPS offices and submitted to Congress, if required by law. (Reference Manual #41: Appendix G provides detailed instruction for completing legal descriptions and boundary maps).

(vi) Designated Potential Wilderness Management. Potential wilderness will be managed as wilderness to the extent that existing nonconforming uses will allow: temporary (non-conforming) uses will be eliminated as soon as practicable in keeping with National Park Service authorities and budgets. All parks containing potential wilderness designated by Congress will inventory that potential wilderness within two years of the issuance of this Director's Order, and every five years thereafter. When non-conforming uses have ceased within the potential wilderness, each park will take the steps necessary for the Secretary to publish in the Federal Register the notice that the potential wilderness is now designated wilderness. (Reference Manual #41: Appendix H addresses conversion of potential wilderness to designated wilderness).

(vii) Recreation Impact Evaluation. The appropriateness of recreation activities in wilderness, and recreation impacts, will be evaluated when changes in the nature and significance of the activities affect their compatibility with wilderness preservation and the statutory purposes of wilderness. The assessment of new or increased activities will be addressed through appropriate environmental compliance documentation as identified in DO#12.

(viii) Wilderness in Comprehensive Interpretive Plan. The Comprehensive Interpretive Plan for parks with wilderness resources will address the primary interpretive themes for wilderness education and reflect the wilderness significance statements as they appear in the park's GPRA Plan (See Reference Manual #41: Appendix I)

(ix) Geographic Naming in Wilderness. In order to maintain the untrammelled character of wilderness, the naming of additional geographic features is discouraged. The National Park Service will not propose to the U.S. Board of Geographic Names, nor support proposals by others, to apply new names to geographic features within any category of wilderness. An exception to this policy may be considered on a case-by-case basis when a proposed name: (a) serves a useful educational or interpretive purpose; or (b) is linked to an historical figure, activity, incident, or resources having a direct association with the

geographic feature; and (c) meets all other National Park Service and Board on Geographic Names policies applicable to geographic naming.

C. WILDERNESS MANAGEMENT ISSUES

The following guidance is provided **for** dealing with major wilderness management issues confronting the National Park Service:

1. Wilderness Management Plan Requirements

The superintendent of each park containing wilderness will develop and maintain a wilderness management plan (or plan for the management of suitable, proposed or recommended wilderness area) to guide the preservation, management, and use of that area.

The plan will be developed with public involvement, and will contain specific, measurable management objectives that address the preservation and interpretation of wilderness-dependent cultural and natural resource values.

NPS Management Policies: 6.3.5 Wilderness Management Plan

*For the purposes of applying NPS wilderness policies, the term 'wilderness' includes the categories of suitable, study, proposed, recommended and designated wilderness. NPS wilderness policies **apply** regardless of category. Potential wilderness may be a subset of any of these five categories. In addition to managing these classified areas for the preservation of their wilderness values, planning for these areas must ensure that the wilderness character is likewise preserved.*

NPS Management Policies: 6.3.1 General Policy

The minimum content requirements for a wilderness management plan are as **follows**:

A wilderness management plan **will** be completed every ten years by all parks containing wilderness resources for the purpose of providing accountability, consistency, and continuity to the National Park Service's wilderness management program. The requirement to have a current wilderness management plan (or similar plan) applies to all areas containing suitable, study, proposed, recommended, and designated wilderness.

The wilderness management plan will: 1) clearly identify the boundaries of wilderness units of the park; 2) identify individuals and/or organizations within the park administration responsible for wilderness **preservation**; 3) establish an **administrative process** to determine "minimum requirement" for actions in wilderness; and 4) establish specific management actions **to** be applied to guide public use and preservation of wilderness resources, including the establishment of desired future conditions.

An environmental compliance document that provides the public with the opportunity **to** review and comment on the park's wilderness management program will accompany **all** wilderness management plans, consistent with the requirements of NEPA and appropriate National Park Service policy guidance.

Because of the unique nature of wilderness resources and possible public controversy over use allocations and their effects, in some instances a full environmental impact statement will be required. Wilderness management plans must be coordinated and integrated with other park planning documents (General Management Plan, the park's Strategic Plan/Annual Performance Plan, Facility Management Plans, Fire Management Plan, etc.) to ensure consistency across park management programs. All **park** disciplines should participate in the planning process.

While parks may exercise considerable flexibility **as** to the organizational and physical format of the wilderness management plan (i.e., plans may be developed as separate documents **or** integrated into General Management Plans, Backcountry Management Plans, **or** Resource Management Plans), the plan must contain at least the topics identified in the "Wilderness Management Plan-Recommended Content" included in Reference Manual #41: Appendix D.

2. Application of the Minimum Requirement Concept

*...except as necessary to meet the minimum requirements **for** the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area) there shall be no temporary road, **no** use of motor vehicles, motorized equipment **or** motorboats, no landing of aircraft, no other **form** of mechanical transport, and no structure or installation within any such area.*

The Wilderness Act: Section 4 (c)

*All management decisions affecting wilderness must be consistent with a minimum requirement concept When determining minimum requirement, the potential disruption of wilderness character and resources will be considered before, and given significantly more weight than, economic **efficiency** and convenience. If a compromise of wilderness resource or character is unavoidable, only those actions that preserve wilderness character and/or have localized, short-term adverse impacts will be acceptable.*

NPS Management Policies: 6.3.5 Minimum Requirement

The National Park Service **will** apply the minimum requirement concept to all administrative activities that affect the wilderness resource and character. The application of the minimum requirement concept **is** intended to minimize impacts on wilderness character and resources and must guide **all** management actions in wilderness.

Wilderness managers may authorize (using a **documented** process) the generally **prohibited activities or** uses listed in Section 4(c) of the Wilderness Act if they are deemed necessary to meet the minimum requirements for the administration of the area as wilderness and where those methods are determined to be the 'minimum tool' for the project. The use **of** motorized equipment and the establishment of management facilities are specifically prohibited when other reasonable alternatives are available. The minimum requirement process cannot be used to permit roads or inappropriate commercial enterprises within wilderness unless these **are** authorized by specific legislation.

The minimum requirement concept is to be applied **as a** two-step process that documents:

- (1) **A** determination as to whether or not **a** proposed management action is appropriate or necessary for the administration of the areas as wilderness. and does not pose **a** significant impact to the wilderness resources and character: and.
- (2) If the project is appropriate or necessary in wilderness. the selection of the management method (tool) that causes the least amount of impact to the physical resources and experiential qualities (character) of wilderness.

It is important to understand the distinctions between the terms “Minimum Requirement,” and “Minimum Tool.”

Minimum Requirement is a documented process the NPS will use for the determination of the appropriateness of **all** actions affecting wilderness.

Minimum Tool means **a** use or activity, determined to be necessary to accomplish an essential task, which makes use of the least intrusive tool, equipment, device. force, regulation, or practice that will achieve the wilderness management objective. This is not necessarily the same as the term “primitive tool,” which refers to the actual equipment or methods that make use of the simplest available technology (i.e., hand tools).

Park managers will apply the minimum requirement concept when making all decisions concerning management of the wilderness area. This includes decisions concerning administrative practices, historic properties, proposed special uses, research, and equipment use in wilderness.

Planned administrative actions that may result in an exception to **a** prohibited use (i.e., chainsaws. aircraft use, radio repeater sites, rock drills. **patrol** structures, weather stations) or have the potential to impact wilderness resources and values **must** be consistent with an approved wilderness management plan and be documented in accordance with the park’s minimum requirements process. The minimum requirements process will be conducted through appropriate environmental analysis (e.g., categorical exclusions, environmental assessment/ FONSI. or an environmental impact statement/Record **of** Decision).

When determining the minimum requirement for **a** proposed action. the manager will strive to minimize the extent of adverse impact associated with accomplishing the necessary wilderness objective. The *determination* **as** to whether or **not** an action has an adverse **impact** on wilderness **must consider both the** physical resources within wilderness. and wilderness characteristics and values. These characteristics and values include: the wilderness’s primeval character and influence; the preservation **of** natural conditions (including the lack of man-made noises); cultural resource values, the assurance of outstanding opportunities for solitude: the assurance that the public will be provided with a primitive **and** unconfined **type** of recreational experience: and the assurance that wilderness will be preserved **and** used in an unimpaired condition.

Managers must give appropriate consideration to the aesthetic values of wilderness as well as the physical resource. These factors take precedence over cost **or** convenience in determining minimum requirement. National parks with wilderness must have a documented process for applying the minimum requirement concept. Reference Manual #41: Appendix F includes examples of "decision trees." which may be adopted or referred to as a procedure by which alternatives can be assessed and final management decisions developed. These decision tree examples do not alleviate a park's responsibility for providing adequate environmental compliance documentation for individual projects.

3. Interagency Coordination

*For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally **owned** areas....*

The Wilderness Act: Sec. 2(a)

*(a) Interagency cooperation and coordination and training responsibilities will also be carried out at the Washington, region, and **park** levels.*

NPS Management Policies: 6.3.2 Responsibility

Interagency cooperation and coordination are required to minimize administrative differences and visitor confusion and to ensure that wilderness resources receive maximum protection. It will be the responsibility of the park manager to ensure that wilderness management within the park unit is coordinated with the management of the surrounding federal, state, and local land managers: federally recognized Native American tribes: and with other public and private organizations, as appropriate.

In areas where the National Park Service wilderness adjoins wilderness administered by another land management agency, the superintendent is responsible for coordinating with adjacent wilderness units to achieve as much consistency as possible in the application of wilderness regulations and management techniques. Coordination can include, but is not limited to, programs and policy concerning the issuance of permits, saddle and pack stock, group and party size, research projects, limits **on** campfires and pets, and other resource and visitor management issues. While the goal is to mitigate problems resulting from the differing missions of the agencies, the National Park Service will not adopt any practice that weakens or compromises the presentation of wilderness within the parks. Where appropriate, National Park Service wilderness education programs will explain the reasons for differences among neighboring agencies managing wilderness.

4. Cultural Resource Management in Wilderness

Each Federal agency shall establish, in consultation with the Secretary: a preservation program for the identification, evaluation, and nomination to the National Register of Historic places, and protection of historic properties.

National Historic Preservation Act

...the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this Act shall in no manner lower the standards evolved for the use and preservation of such park...in accordance with the Act of August 25, 1916, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area including...the Act of June 8, 1906 ["Antiquities Act"]... and the Act of August 21, 1935 ["Preservation of Historic Sites Act"]...

The Wilderness Act: Section 4(a)(3)

Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.

The Wilderness Act: Section 4(b)

Wilderness contains scientific, educational, and historical properties that are also cultural resources. There has been extensive prior human use in most areas now designated as wilderness, resulting in archeological sites, historic structures, cultural landscapes and associated features, objects, and traditional cultural properties that are contributing elements to wilderness. It is important to recognize that laws, such as the National Historic Preservation Act (NHPA), Archeological Resources Protection Act (ARPA), American Indian Religious Freedom Act (AIRFA) and the Native American Graves Protection and Repatriation Act (NAGPRA), as well as others, intended to preserve our cultural heritage, are applicable in wilderness.

National Park Service managers are responsible for maintaining an affirmative cultural resource management program in wilderness. The cultural resource management tasks within wilderness are the same as those elsewhere, but these sites must additionally be treated in a manner that preserves other wilderness resources and character. Measures to protect and inventory cultural resources in wilderness must comply with the Wilderness Act provisions on access and use of the minimum requirement concept.

Cultural resource specialists shall fully participate in the development of a park's wilderness management plan. In keeping with the full range of options identified in the Secretary's Standards, management actions affecting cultural resources in wilderness may include a variety of management options including preservation of a site or property, protection from vandalism, professional level documentation, and may include removal. However, actions involving all cultural resource types in wilderness must comply with cultural resource laws, such as compliance actions and inventory requirements mandated by the NHPA. Pertinent management actions must be made in consultation with the public interested in the historic preservation issue(s), including, but not limited to Native American tribes, State Historic Preservation Officers and, if necessary, the Advisory Council on Historic Preservation.

Wilderness, for some Native American groups, is a place of profound tribal history, traditional use, or a homeland. Ancestral human remains are protected in wilderness through NAGPRA, standing Executive orders, and the Presidential Memorandum concerning "Government to Government Relationships." These underscore strongly held tribal relationships to places in wilderness. Within wilderness, a number of Native American tribes continue religious ceremonies and other practices as provided for in the American Indian Religious Freedom Act.

Managers must develop long-term, constructive relationships with traditionally associated tribes to assist in culturally sensitive wilderness management. Wilderness areas may also be areas where treaty responsibilities and provisions apply.

5. Fire Management in Wilderness

(d) The following special provisions are hereby made..In addition, such measures may be taken as may be necessary in the control of fire...subject to such conditions as the Secretary deems desirable.

The Wilderness Act: Section 4(d)

Fire management activities conducted in wilderness areas will conform to the basic purposes of wilderness. The park's Fire Management and wilderness management plans together will identify the natural and historic roles of fire in the wilderness and will provide a prescription for response, if any, to natural and human-caused wildfires. If a prescribed fire program is implemented, these plans will also include the prescriptions and procedures under which the program will be conducted within wilderness.

Actions taken to suppress wildfire will use the minimum requirement concept and will be conducted in such a way as to protect natural and cultural features and to minimize the lasting impacts of the suppression actions and the fires themselves.

NPS Management Policies: 6.3.9 Fire Management

Under ideal conditions, natural fire should be considered as a fundamental component of the wilderness environment. Director's Order # 18: Wildland Fire Management, directs that all fires burning within wilderness will be classified as a "wildland fire" or a "prescribed fire." Wildland fires are those that result from unplanned ignitions. Prescribed fires are those resulting from planned ignitions. All wildland fires within wilderness will be managed to include the application of minimum requirement suppression techniques, the consideration of firefighter and public safety, a cost/benefit analysis, sensitive natural and cultural resources, and will use the strategic and tactical options described in an approved fire management plan.

Fire management plans must address the effects of fire management decisions on wilderness resources and character, air quality, smoke management, water quality, and other pertinent natural and cultural resource management objectives.

Until a fire management plan is approved, all wildland fires in wilderness must be suppressed, with strong emphasis on the concept of minimum requirement in determining suppression methodologies.

Parks containing wilderness will integrate wilderness considerations in the systematic decision-making process, determining the most appropriate management strategies for all planned ignitions (prescribed fires), and for any unplanned fires that no longer meet resource management objectives. While parks lacking an approved fire management plan may not use resource benefits as a primary consideration influencing selection of a wildfire suppression strategy, the resource impacts of suppression alternatives on wilderness values must be considered when decisions are made.

Wilderness values must be adequately represented during all fire planning processes, and wilderness managers will assist in the selection and implementation of appropriate responses to wilderness fires. Resource advisors must be knowledgeable about wilderness values, objectives, and policies.

Any delegation of authority to Incident Management Teams will include appropriate emphasis on the protection of wilderness resources. The methods used to suppress all wildland fires should be those that minimize the impacts of the suppression action and the fire itself, commensurate with effective control and the preservation of wilderness values. Fire suppression teams should be trained in the concepts of wilderness management, the preservation of wilderness values, and wilderness fire management. This requirement should be identified in appropriate delegation orders.

6. Wilderness Interpretation and Education

In the context of park interpretive and educational planning, national parks with wilderness resources will operate public education programs designed to promote and perpetuate public awareness of: and appreciation for, wilderness character, resources and ethics

NPS Management Policies: 6.4.8 Wilderness Interpretation and Education

The Comprehensive Interpretive Plan for parks with wilderness will include and address the **primary** park interpretive themes that reflect the wilderness significance statements that appear in the park's GPRP Plan (See Reference Manual 41: Appendix I). Wilderness character and resources should be included in the park's interpretive and educational program, and be included **as** an integral component of the long range interpretive plan and annual implementation plan. Other key issues to be presented include wilderness safety and Leave No Trace ethics.

Public interpretation and education is essential for the support, understanding, and protection of wilderness. On-site programs may include talks, walks and other presentations, trailhead information, publications, and wilderness information centers or exhibits in existing visitor centers. Off-site and outreach programs may include a variety of presentations, curriculum-based education programs, web page sites, and publications.

Guided interpretive walks in wilderness will be conducted in accordance with day use limits prescribed in the park's Wilderness Management Plan. The walks will be conducted with sensitivity toward the experience of other wilderness users, and with minimal impact to the wilderness character and resource.

Staff education is an integral **part** of any wilderness education program. Wilderness awareness training will be incorporated into to all appropriate training programs. Examples include orientation training for seasonal park staff, cooperating associations, concessions, and volunteers. Park managers are encouraged to establish partnerships to better promote the benefits and values of wilderness.

7. Mineral Development in Wilderness

*Except as specifically provided for in this chapter, and **subject** to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this chapter....*

The Wilderness Act: Sec. 4(c)

*The NPS will **seek** to remove **or** extinguish valid mining claims and non-federal mineral interests in wilderness through authorized processes including purchasing valid rights. In parks where Congress has authorized the leasing of federal minerals, the Park Service will **take** appropriate actions to preclude **the** leasing of lands or minerals within wilderness....*

NPS Management Policies: 6.4.6 Mineral Development

Valid mineral interests and mining claims in wilderness will be managed pursuant to existing NPS regulations, policies, and procedures unless and until eliminated by acquisition, relinquishment, exchange or other methods. Regulations at 36 CFR Part 9A govern the development of mining claims located under the 1872 Mining Law. Regulations at 36 CFR Part 9B govern nonfederal oil and gas development. All other mineral development in parks, including wilderness, must be authorized under applicable regulations at 36 CFR Parts 1.6 and 2 through 5. Access in Alaska is additionally regulated by 43 CFR Part 36. More detailed information on managing minerals in wilderness can be found **in** other NPS guidance documents, including the "NPS Procedures Governing Mining Claims," the "NPS Procedures Governing Non-federal Oil and Gas Rights," and Natural Resources Reference Manual #77.

Validity exams: Under current NPS policy, validity exams must include the costs of complying with **all** applicable NPS regulations (NPS Procedures Governing Mining Claims, p. 35). In wilderness areas, validity exams should include the costs of environmental mitigation necessary *to* preserve the wilderness character, including possible restrictions on access or operations or additional **costs** of reclamation. Determination of the necessary mitigation measures may require that the environmental compliance process be conducted concurrently with the validity exam.

Motorized access: Stipulations on access **may** include non-motorized means, **restrictions** on **the** time and location of the access, restrictions on traffic volume and size, or other reasonable measures to minimize **both** short-term and long-term effects on wilderness resources and character.

Plan of operations: Stipulations on approved operations to ensure that **short-term** and long-term effects on **the** wilderness area are substantially unnoticeable may include, but are not limited to, sound **barriers**,

camouflage, camping platforms, reducing operations to certain times of the day or year, limiting night lighting, hauling out all grey water or other wastes, and restoration of natural conditions and processes.

Abandoned mine lands: Sites will be evaluated **for** closure or restoration using the minimum requirement analysis, which includes consideration of public safety and other pertinent laws and regulations and restoration of wilderness values.

8. Scientific Activities in Wilderness

A wilderness...may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The Wilderness Act: Sec. 2(c)(4)

*Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical **use**.*

The Wilderness Act: Sec. 4(b)

*The statutory purposes of wilderness include scientific activities, and these activities are permitted when consistent with the agency's responsibilities to preserve and manage wilderness. The National Park Service has a responsibility to support appropriate scientific activities in wilderness, and to use science to improve wilderness management. The National Park Service recognizes that wilderness can and should serve as an important resource for long-term research, study, and observation of ecological processes and the impact of humans on these ecosystems. The National Park Service further recognizes that appropriate scientific activities may be critical to the long-term preservation of wilderness. Accordingly, scientific activities are **to be encouraged in** wilderness, provided that the benefits of what can be learned outweigh **any** negative impacts **on** the wilderness resource or values.*

NPS Management Policies: 6.3.6 Scientific Activities

The Wilderness Act intended, and NPS policy provides for, the conduct of legitimate natural **and** cultural scientific use of wilderness areas. The scientific value of wilderness derives from its undisturbed conditions. Because undisturbed natural areas are increasingly rare, wilderness areas often provide unique opportunities for scientific investigation. Scientific activities are to be encouraged in wilderness, provided that the benefits of what may be learned outweigh the negative impacts on other wilderness values.

The National Park Service recognizes and supports the value of wilderness areas as natural outdoor laboratories of both local and national significance. Research that aids or supports wilderness stewardship or administration and purposes of the wilderness area or park is to be encouraged--within the bounds of other applicable National Park Service policy and regulations, including the application of the minimum requirement concept.

The increase of scientific knowledge, even if it serves no immediate wilderness management purpose, may be an appropriate wilderness research objective when it does not compromise wilderness resources and character. However, research and other science projects in wilderness must meet accepted protocols and standards, including those related to safety.

It is important for scientists to understand that the conduct of their research should be in accord with wilderness preservation principles. Applications for research and other scientific work in National Park Service wilderness should demonstrate a positive benefit to wilderness or wilderness purposes and must include a minimum requirements analysis of the project's methodologies.

9. Wilderness Use By Persons With Disabilities

(1) In General -- Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act, no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area to facilitate such use.

(2) Definition-- For the purposes of paragraph (1), the term wheelchair means a device designed solely for the use by a mobility-impaired person for locomotion that is suitable for use in an indoor pedestrian area.

Americans with Disabilities Act of 1990 (ADA):

(b) Section 507(c), 104 Stat. 3-77, 42 U.S.C. 12207

In meeting the goal of accessibility, emphasis will be placed on ensuring that persons with disabilities will be afforded experiences and opportunities with other visitors to the greatest extent practicable.

NPS Management Policies: 9.1.?

Accessibility for Persons with Disabilities

The National Park Service has legal obligations to make available equal opportunities for people with disabilities in all of our programs and activities. This requirement includes the opportunity to participate in wilderness experiences. Management decisions responding to requests for special consideration to provide for wilderness use by persons with disabilities must be in accord with the Architectural Barriers Act of 1968, the Rehabilitation Act of 1973 (amended in 1978), and Section 507(c) of the Americans with Disabilities Act of 1990. Such decision should balance the intent of the access and wilderness laws and find a way to provide the highest level of access for the disabled with the lowest level of impact on the wilderness resource.

As a matter of law, the Rehabilitation Act (29 USC 701 et seq.) prohibits discrimination on the basis of disability in all programs and activities provided by the National Park Service. The Department of the Interior has adopted regulations (43 CFR 17) to implement the requirements of the Rehabilitation Act. Additionally, in the Americans with Disabilities Act, Congress added the above provision to the Act to address the access needs of persons with disabilities in wilderness areas.

The Secretary of the Interior's regulations regarding "Enforcement of Nondiscrimination on the Basis of Disability in Department of the Interior Programs" (43 CFR 17) require that the NPS will operate all programs and activities so that they are accessible to and usable by persons with disabilities to the greatest extent practicable. However, Section 17.550 of those regulations states that agencies are not required to take any actions or provide access that would result in a fundamental alteration in the nature of a program or activity. This concept is also found in Section 507 of the American with Disabilities Act. The agency subsequently has the burden of proving that compliance would result in a fundamental alteration. While providing for the use of wheelchairs in wilderness areas, Congress states that "no agency is required to provide any form of special treatment **or** accommodation, or to construct any facility or modify any condition of lands within a wilderness area in order to facilitate the use of a person using a wheelchair."

While the National Park Service is not required to provide any special treatment to provide access for persons with disabilities who use wheelchairs, managers should explore solutions **for** reasonable accommodations when not in conflict with the Wilderness Act (e.g., barrier-free trails, accessible campsites). Any facilities, built or altered, must meet current accessibility guidelines.

Wheelchairs are allowed in wilderness if they meet the definition in the **ADA**. The intent of this definition is that a wheelchair is a person's primary mode of locomotion, manual or electric, that is suitable for use in indoor pedestrian areas. This definition is also intended to ensure that persons using wheelchairs are reasonably accommodated in wilderness without the need to compromise the wilderness resource and its character.

The National Park Service will allow service animals within wilderness when it makes these areas accessible and usable by persons with disabilities. The ADA defines a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to a person with a disability. Service animals are required by persons with disabilities in day-to-day activities, and are permitted in wilderness. The training of service animals in wilderness is only allowed with specific permission from the park superintendent. Documentation must be provided that the animal is legitimately in training to be a service animal.

A publication entitled "Wilderness Access Decision Tool" (See Reference Manual #41: Appendix E) provides further guidance in assisting managers in making appropriate, objective, and consistent decisions regarding the use of wilderness areas by persons with disabilities. Managers should ensure that decisions concerning wilderness use does not inadvertently discriminate against persons with disabilities.

10. Special Events in Wilderness

The National Park Service will not sponsor or issue permits for special events to be conducted in wilderness if those events might be inconsistent with wilderness resources and character, or do not require a wilderness setting to occur.

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NPS Management Policies: 6.4.5 Special Events

Special events can cause wilderness resource degradation and intrude on the opportunities for solitude. Any request for the issuance of a permit for a special event in wilderness must be evaluated through the minimum requirement process and administered under 36 CFR 2.50.

Permits will not be issued for special events that are commercial enterprises, or for competitive events, activities involving animal, foot or water craft races, physical endurance of a person or animal, organized survival exercises, war games, or other similar exercises in NPS wilderness areas.

11. Wilderness Training Requirements

Superintendents, aided by the National Wilderness Program Manager and the Office of Employee Development, are responsible for providing appropriate types and levels of wilderness training needed by park and other agency personnel. Park will be surveyed on a periodic basis to determine their highest priority wilderness training needs for incorporation into a long-term training strategy.

The Associate Director, Park Operations and Education, in cooperation with the Office of Employee Development, will develop and maintain a strategic plan for wilderness training that identifies training needs for personnel, locations of personnel, and a plan for delivery of training. The Office of Employee Development and the National Wilderness Program Manager will complete an annual training notice to provide information on all wilderness training opportunities available from all sources, recruitment and nomination procedures, criteria for selection of participants, and available funding sources. The National Wilderness Program Manager will also complete an annual report on wilderness training accomplishments.

12. Commercial Services in Wilderness.

Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise...within any wilderness area....

The Wilderness Act: Section 4(c)

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 area.

The Wilderness Act: Section 6

Wilderness-oriented commercial services that contribute to achieving public enjoyment of wilderness values or provide opportunities for primitive and unconfined types of recreation may be authorized if they meet the "necessary and appropriate" tests of the Concessions Policy and Wilderness acts and if they are consistent with the wilderness management objectives contained in the park's Wilderness

Management Plan.

NPS Management Policies: 6.4.4 Commercial Services

Appropriate commercial enterprise may be permitted under special provisions found in: (1) Section 4(d)(5) of the Wilderness Act; (2) individual park wilderness enabling legislation; or (3) existing private rights. While a permitted commercial enterprise allowed under Section 4(d)(5), including a commercial recreational service such as a guide service, is not subject to the "prohibition of certain uses" conditions identified in section 4(c) of the Wilderness Act. It must adhere to the minimum requirement concept in all aspects of its operation.

The only structures or facilities used in support of such commercial recreational services that will be allowed in wilderness are temporary shelters, such as tents, which will be removed from the wilderness after each trip unless exceptions are clearly identified in the park's Wilderness Management Plan. There may also be specific exceptions to this policy identified within individual park wilderness enabling legislation or in ANILCA.

Commercial film and commercial photography permits, as identified and required by 36 CFR 5.5, Section 8.6.6 of National Park Service Management Policies, and Director's Order #53, will not be approved in wilderness areas unless determined to be necessary and proper for providing educational information about wilderness uses, resources or values, ~~or~~ necessary for other wilderness purposes.

The appropriate and fair ratio between commercial and private use allocation is to be addressed within the park wilderness management plan and associated environmental compliance document. The public must be afforded a full opportunity to provide input to these use allocations.

13. Air Quality in Wilderness

The purpose(s) of this part (Prevention of Significant Deterioration of Air Quality) are as follows...to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, ~~or~~ historic value...

The Clean Air Act: Section 160

Congress hereby declares as a national goal the prevention of ~~any~~ future, and ~~the~~ remedying of ~~any~~ existing, impairment of visibility in mandaton Class I federal areas, which impairment results from manmade air pollution.

The Clean Air Act: Section 169A

The Clean Air Act (CAA) as amended specifically gives Federal Land Managers (FLMs) the affirmative responsibility to protect the air quality related values (AQRVs), including visibility, of Class I areas and to consider, in consultation with the Administrator of EPA, whether a proposed major emitting facility will have an adverse impact on such values (CAA, Section 165 (d)(2)(B)).

AQRVs and levels of impact vary for different Class I areas. Managers must inventory wilderness ecosystems, collect baseline data, and identify sensitive indicators to air pollution. Long term monitoring programs should be established to track changes to these indicators.

Air pollution is a threat that knows no boundaries and is caused by many diverse sources. Most air pollution is generated outside Class I area boundaries and transported into wilderness areas and national parks. These sources of pollution include electric power generation, automobiles and other mobile sources, industrial manufacturing activities, dust from roadways, construction activities and other urban and rural sources, for example. To mitigate the impacts of these sources, managers will be involved in State and local air quality planning and permitting processes and in reviewing NEPA projects with the potential to impact Class I areas. Smoke from wildland fire is an exception, in that it commonly occurs within our Class I areas. Managers will be responsible for reducing the impacts of smoke from wildland fires on visibility in Class I wilderness, while understanding and promoting the need to re-introduce the natural role of fire into wilderness ecosystems.

As community leaders in environmental stewardship, NPS managers are committed to using sustainable practices in parks that will reduce air pollution, such as the use of alternative energy sources, i.e., solar power, wind energy, and alternative fuels. Interpretation of these and other sustainable practices in parks will also help educate visitors on ways they can reduce their contribution to air pollution.

Notwithstanding the FLM's affirmative responsibility to protect AQRVs in Class I areas, we have no direct permitting or enforcement authority over air pollution sources. Ours is a consultation role with the regulatory agencies. Our recommendations can be accepted or rejected by EPA, State, or local air permitting authorities. Therefore, it is very important that managers communicate routinely with regulatory agencies regarding sources that threaten resources in our Class I areas. Managers will participate in interagency partnerships for the purpose of protecting Class I air quality and related values.

Annual Report to Congress

At the opening of each session of Congress, the Secretaries of Agriculture and Interior shall jointly report to the President for transmission to Congress on the status of the wilderness system.

The Wilderness Act: Section 7

Each wilderness park area will provide the information needed by the Washington Wilderness Program Coordinator to prepare the National Park Service's submission to the Secretary of the Interior for his/her Annual Report to Congress. The format for the park submission will be developed by the Wilderness Program Manager and the National Wilderness Steering Committee. Reference Manual #41: Appendix J contains a draft format as an example of the needed annual park submission.

15. Other Wilderness Management Issues To Be Addressed

There are many other policy and director's orders issues that need to be addressed and/or expanded upon, and this will be done quickly as time and staffing allow. These issues include, but are not limited

to, the following:

Climbing protocols. Annual Report to Congress Format (**per** Section 7 of the Wilderness Act), Evaluating Proposals for Scientific Activities in Wilderness. Solitude and Presentation **of** the Wilderness Soundscape. Risk Management and Safety/ Search and Rescue, New/Emerging Technologies. Zoning, Water Resource Management. Human Waste Management, Carrying Capacities, Group *Size* Limits, and Alien Species Management.

Other issues will be addressed **as** necessary. Superintendents and staff are encouraged to address these issues within the context of their individual wilderness management **plans** and/or request program guidance.

E. Military Facilities

A Department of Defense Directive. Number **3** 165.6, issued September 1, **1987** states in section 6.2.2 Use of Real Property. Installation commanders should use the following priorities when assigning unused space on their installations. They may make exceptions to these priorities when they determine if it is in the best interest of the installation to do so. The commanders shall consider: ...6.2.2.5. All others.” Prior to other uses, the installations commander must consider the DoD activities, then activities of other DoD tenants, then other federal agencies, before considering all others. Section **6.2.3.4.** speaks to outleasing. and **6.26** Charges for Use of space. In section 6.2.3.4 “**All** proposed outleasing actions (irrespective of grantee or considerations must be considered and assessed within the policy guidance of DoD Directive 5100.50 and **42 USC 4321** (references **(s)** and **(i)**). It further states, in section 6.2.6, “Charges for Use of space. Unless specified differently in this or other DoD regulations, charges shall be assessed at **fir** market rates for **use** of DoD space by other Federal Agencies. Exceptions to this policy are: ...6.2.6.5. Permits in the nature of an easement granting a right of way **for** roads, pipelines, cables, or similar purposes.”

In summary. it is possible to receive a right-of-way on Department of Defense facilities. and while I found references to other federal agencies, or educational facilities, I did not specifically **find** a reference to utility installations or other installations such as fiber optics. I surmise that it is possible, and that once again. fair market value determines the ongoing annual fee. with the initial costs for installation being borne by the applicant.

F. National Marine Sanctuaries

The National Marine Sanctuary has a issued a draft report titled “Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries” **August** 2001. In the conclusion of the *report*, the **authors** of the report recommend the analysis of comparable previous transactions at the appropriate approach to determining fair market value. Bulletin board for the National Marine Sanctuary, in the internet at the following address:
www.sanctuaries.nos.noaa.gov/news/newsbboard/newsbboard.html has the following posting.

A notice reopening the comment period on the draft report "Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries" was published in the Federal Register on August 17, 2001. The comment period is open for 45 days, closing on October 1, 2001.

Summary of the Analysis and Original Comment Period

The National Oceanic and Atmospheric Administration's (NOAA's) National Marine Sanctuary Program (NMSP) has been addressing various issues related to the installation and maintenance of submarine cables in national marine sanctuaries. Section 310 of the National Marine Sanctuaries Act, 16 U.S.C. [44], authorizes the issuance of special use permits to establish conditions of access to and use of any sanctuary resource or to promote public use and understanding of a sanctuary resource. Section 310 also authorizes the assessment of fees for issuance of special use permits, including a fee that represents the fair market value of the use of sanctuary resources. To date, two special use permits have been authorized for fiber optic cables in national marine sanctuaries: one in Olympic Coast NMS off the coast of Washington state (November 1999) and another in Stellwagen Bank NMS off the coast of Massachusetts (August 2000). With the assistance of several outside experts, NOAA resource economists have written the report "Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries" analyzing how fair market should be calculated and assessed.

The report was first published in the Federal Register in January 2001 for a fifteen-day comment period. Most comments requested additional time to provide public input on the report. Therefore, NOAA is now reopening the comment period for 45 days.

Since the initial comment period, NOAA has updated the report by making a number of editorial and clarifying changes, and including some updated information. Further, NOAA has removed the recommended fee amount in the original analysis and is seeking comments on the methodology described in the report or suggestion of an appropriate alternative methodology. Once the current comment period closes, NOAA will evaluate the comments and make any necessary revisions to the methodology used in determining fair market value. NOAA will publish a final notice that summarizes all comments and presents a final fee methodology to be applied to any future cable projects within national marine sanctuaries that may be authorized pursuant to a special use permit.

The section titled The Permitting Process and Fair Market Value states:

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to issue special-use permits authorizing the conduct of specific activities and establishing conditions of access and use for marine sanctuary resources. The presence of a fiber-optic cable on the floor of a sanctuary is a use for which a permit may be issued. According to the NMSA, the Secretary may assess and collect a fee that includes the cost of issuing the permit, as well as monitoring and other costs incurred as a result of the permitted activity.

In addition, the fee must include "an amount which represents the fair market value of the use of the sanctuary resource." In addition to issuing a special-use permit, Sanctuary authorities must review and authorize an Army Corps permit for any cable project that includes a sanctuary crossing. The permitting

process of the Army *Corps* of Engineers covers installation, maintenance and removal for an entire undersea cable project. Potential harm to the undersea environment from cable installation is examined in an appropriate environmental review under the National Environmental Policy Act. NMSP is developing a set of principles to guide the installation of cables in marine Sanctuaries and is working to ensure that environmental impacts will be minimal and appropriately mitigated. Those principles were published for comment in an advance notice of proposed rulemaking (65 FR 51264, Aug. 23, 2000). NOAA is currently reviewing comments received on this notice.

Installation, maintenance, and removal of the cables are covered by sanctuary authorization of the Army *Corps* permit. Because some amount of injury may occur during cable installation, and because by law the special-use permit cannot be applied to any activity causing injury, the special use being authorized by NMSP is to allow the use of sanctuary resources by the long-term presence of the cables on the sanctuary seabed.

In 1993 the Office of Management and Budget (OMB) issued its most recent directive concerning fair market value and fees charged for the use of Federal agencies to assess a user charge against each identifiable recipient for a service or privilege that confers special benefits. As with the granting of a fiber-optic permit, such a privilege "enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public." A government service is also designated as a special benefit if it is "performed at the request of or for the convenience of the recipient." The directive further states, "user charges will be based on market prices."

The issue of "fair market value" or "market price" for the use of a sanctuary resource is complicated by the presence of non-market amenities. The value of a marine sanctuary lies in the conservation of a marine environment deemed to have special significance. Many people receive pleasure in knowing that the sanctuaries exist and are protected. These individual values, added up over millions of people, may have tremendous value, but little economic information about the extent of this value is revealed in market transactions. Additionally, installing a cable in a marine sanctuary can provide economic benefits to the public. This fair market value analysis will take account of these potential economic benefits to the public.

This report relies on a comparison between the granting of a fiber optic permit and the sale of a fiber optic right of way. Numerous private-market precedents exist for the appraisal and sale of such right-of-way easements. This report also considers the amenity value of a sanctuary, but for a number of reasons this value is not specifically estimated and is not part of the calculation of fair market value. It is believed that the analysis of market transactions results in a reasonable special-use fee based on **sound and thorough** economic considerations.

II. State of Idaho Lands

A. Idaho Transportation Department

The Idaho Transportation Department (ITD)'s Roadway Design Manual, Chapter 4, addresses Utilities