



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

[As amended by Memoranda dated August 31 and
November 20, 2020]

DIRECTOR'S ORDER #53: SPECIAL PARK USES

Approved: 
Director

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1. PURPOSE AND SCOPE

This Director's Order (DO) sets forth the policies and procedures for administering special park uses on National Park System lands. It supersedes all previous editions of DO #53.

National Park Service (NPS) policy guidance on special park uses is contained in section 8.6 of NPS [Management Policies 2006](#). That guidance is summarized in, and supplemented by, this Director's Order; however, this Director's Order does not discuss all details of managing special park uses. For more detail on any point referenced herein, refer to [Reference Manual 53](#) (RM-53), the companion document to this Director's Order. For additional information, consult the Washington and regional office special park use specialists.

2. BACKGROUND

A special park use is an activity that takes place on park land or waters and meets the following criteria:

- Provides a benefit to an individual, group, or organization, rather than the public at large,
- Requires written authorization and some degree of NPS management to protect park resources and the public interest,
- Is not prohibited by law or regulation,
- Is not initiated, sponsored, or conducted by the NPS,
- Is not managed under a concession contract, and
- Is not managed through a lease.

A special park use does not include any activity managed under the Concessions Management Improvement Act of 1998 (16 U.S.C. § 5951), or any leasing activity managed under the National Historic Preservation Act (16 U.S.C. § 470h-3) or Section 802 of the National Parks Omnibus Management Act of 1998 (16 U.S.C. § 1a-2(k)).

The Superintendent of each park unit is responsible for decisions to approve or deny requests to engage in special park uses at that particular park. This is an important responsibility. Superintendents should consult DO #75A Civic Engagement and Public Participation for guidance about notifying the public about permit fees or other special use park issues. Local decisions regarding special park uses may have Servicewide implications and set precedents that affect management of other parks. The Superintendent should consult with the regional or Washington Office special park use program manager whenever a decision on a requested use may have ramifications beyond the individual park unit.

Whether a request to engage in a special park use is approved or denied, the Superintendent's decision must be based on consideration of relevant factors related to the request. The decision document should articulate a rational connection between the facts and the final decision. The decision should conform to NPS legal mandates, Servicewide policies, consider effects on Servicewide programs, be consistent with decisions made both at the individual park and at parks Servicewide, and be thoroughly documented in an administrative record.

3. AUTHORITIES

The authority to issue this Director’s Order derives from the 1916 NPS Organic Act (16 U.S.C. §§ 1-4). The Service’s authority to issue special use permits derives from the Organic Act and other authorities and NPS regulations at 36 CFR Parts 1 through 7. Right-of-way permits are authorized by NPS regulations at 36 CFR Part 14. General NPS policy about special park uses is set forth in *NPS Management Policies 2006*.

General Authorities for Park Uses. The 1916 NPS Organic Act and a 1978 amendment to the NPS General Authorities Act restrict the kinds of activities allowed within the National Park System.

The NPS General Authorities Act of 1970, as amended, includes the following language specific to authorization of park uses:

The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. (16 U.S.C. § 1a-1).

Together, these laws mandate the NPS to manage park uses to protect against impairment of park resources, values, and purposes. Impairment “is an impact that, in the professional judgment of the responsible NPS manager, would cause injury or damage or harm the integrity of park resources or values...” (see *Management Policies 2006* sections 1.4.4 – 1.4.5).

Statutory Authority. A permit for a special park use may be issued only if the applicant has a specific legal right to engage in that use, or a specific statute exists that allows the use. A right to engage in a special park use may arise from the U.S. Constitution, a treaty, statute, or existing property ownership such as an easement or certain types of mineral rights. Constitutional authority generally arises from the First Amendment, guaranteeing freedom of religion, speech, press and assembly. Statutory authority to allow a special park use may derive from general statutes (e.g. the NPS Organic Act), or a park-specific statute. The statutes most frequently cited for special park uses are:

- 16 U.S.C. §§ 1-4, for general uses
- 16 U.S.C. §§ 5 or 79, for rights-of-way
- 16 U.S.C. § 460l-6d for commercial filming and still photography

Certain other documents, such as Executive Orders, regulations, and case law may provide guidance on whether a proposed activity or special park use is allowed; however, none of these documents in and of itself *authorizes* any use; the Superintendent must always be able to cite an existing legal right or statutory authority for any use he or she approves.

Delegation of Authority. Regional Directors and Superintendents are authorized to exercise the authority of the Director to issue special park use permits with limited exceptions for right-of-way permits. Superintendents are further authorized to redelegate this authority to appropriate park employees. The re delegation must be in writing, signed by the Superintendent and identify the specific types of special park use requests covered by the delegation. The Superintendent should make this decision only after careful consideration of the following factors:

- Complexity of the proposed use
- Potential for unacceptable impacts to park resources and values
- Number of requests received annually by the park for the particular activity
- Experience of the person to whom the authority is being delegated

The written delegation of authority by the Superintendent should be retained as part of the park's files.

Regional Directors are authorized to exercise the authority of the Director to issue new right-of-way permits, including permits for telecommunication facilities for terms of 10 years or less. Superintendents are authorized to issue renewals, conversions and amendments to right-of-way permits with terms of 10 years or less. Right-of-way permits (new, renewals and amendments) with terms greater than 10 years require the Director's signature for approval. The delegation of signature authority for right-of-way permits set forth in this Director's Order may not be redelegated by Regional Directors or Superintendents.

4. POLICY GUIDANCE

General. The NPS should encourage special park uses that accomplish any or all of the following:

- Support the mission of the NPS
- Add to the public understanding and enjoyment of the park
- Promote a sense of ownership and stewardship for the park and its resources
- Enhance the protection of park resources and values;
- Provide for an increased level of visitor safety.

The NPS will not issue special park use permits that:

- Create an unacceptable impact on park resources or values (see *Management Policies 2006*, [section 1.4.7.1](#)), or
- Are contrary to the purposes for which the park was established, or
- Unreasonably disrupt the atmosphere of peace and tranquility of wilderness, natural, historic, or commemorative locations within the park, or
- Unreasonably interfere with interpretive programs, visitor activities, visitor services, or NPS administrative activities, or
- Substantially interfere with the operation of public facilities or the services of NPS concessioners or contractors, or

- Create an unsafe or unhealthy environment for other visitors or employees, or
- Result in conflict with other existing uses.

The Superintendent may only approve a request to engage in a special park use, or any renewal of an existing use, if the use does not trigger any of the criteria above. Existing uses that trigger any of the above criteria which can not be mitigated to an acceptable limit through permit terms and conditions must be phased out.

The NPS will ensure that the special park use permit for an existing or proposed use based on a Constitutional or statutory right, or property ownership includes terms and conditions that avoid triggering the above criteria by mitigating the impacts.

5. PERMIT APPLICATIONS

There are five special park use application forms approved by the Office of Management and Budget (OMB). Parks are prohibited from creating their own application forms without OMB approval. Each of the OMB-approved application forms is discussed below.

- NPS 10-930 Application for Special Use Permit (OMB No. 1024-0026). This is a general application form used for most special park use requests.
- NPS 10-931 Application for Commercial Filming/Still Photography Permit (OMB No. 1024-0026).
- NPS 10-932 Application for Commercial Filming/Still Photography Permit (OMB No. 1024-0026).
- NCR 7.96 Parks' Application for Permit to Conduct a Demonstration or Special Event in Park Areas and a Waiver of Numerical Limitations on Demonstrations for White House Sidewalk and/or Lafayette Park (OMB No: 1024-0021) for designated units in the National Capital Area within Unified Region 1 – North Atlantic - Appalachian.
- Standard Form (SF) 299 Applications for Transportation and Utility Systems and Facilities on Federal Lands (OMB No. 1004-0189). This application is used for requests for rights-of-way and telecommunication permits.

As part of the “E Government Initiative,” parks should post forms 10-930 and one or both of the Commercial Photography/Filming applications (10-931 and 10-932) in PDF format on the park web site at www.nps.gov.

6. PERMITTING INSTRUMENTS

The following three documents may be used to authorize a special park use.

- **Special Use Permit (10-114).** A Superintendent issues this document to an individual or organization to allow the use of NPS-administered resources and to authorize activities that require a permit (generally found in 36 CFR Parts 1-7). The 10-114 form becomes the front page of the permit. Appended to it are terms and conditions that apply to that

activity. The 10-114 form is signed and dated by the permittee, agreeing to the terms and conditions of the permit, and then signed and dated by the Superintendent, approving the activity.

- **Public Gathering Permit** (for parks covered by 36 CFR 7.96) is issued with terms and conditions that apply to that activity.
- **Right-of-way permit.** A Regional Director issues this document to authorize new rights-of-way, including, but not limited to, telephone lines, electric lines, telecommunication facilities, and water conduits on NPS lands. This includes those utilities not owned by the NPS, but serving the NPS and/or NPS concession facilities. The park should add park-specific terms and conditions to the templates found in RM-53. The permittee signs the permit, agreeing to the terms and conditions of the permit prior to the Regional Director signing the document approving the permit. The templates also are used to renew existing rights-of-way. Renewals are signed and dated by the permittee, agreeing to the terms and conditions of the permit then signed and dated by the Superintendent approving the permit.

Permits Other than Special Use Permits. The NPS issues permits other than those covered under this Director's Order including, but not limited to permits for research, collection, the exercise of mineral rights associated with solid waste disposal, mining claims and non-Federal oil and gas, and use of natural and cultural resources as well as agreements or authorizations for specific park uses. Requirements for these permits, agreements, or authorizations are found in NPS regulations at 36 CFR and guidance can be found in the following Director's Orders and related Reference Manuals:

- NPS Museum Collections Management – DO #24
- Cultural Resource Management – DO #28
- Wilderness Management – DO #41
- Scientific Research and Collecting – DO #74
- Natural Resources – DO #77
- Social Science – DO #78
- Commercial Use Authorizations
- Leases – DO #38/RM-38
- Agreements – NPS Agreements Handbook – a supplement of DO #20

7. PERMITTING AND RENEWAL PROCESS

Reasons for Issuing a Permit. There are three primary purposes for issuing a special use permit, regardless of type:

- To impose terms and conditions upon the activity to prevent impairment or unacceptable impacts to park resources, values, and purposes,
- To obtain the signature of the permittee agreeing to the terms and conditions of the document, and
- To establish a written description of the approved use for inclusion in the administrative record.

Basic Requirements for Issuance. An application to engage in a special park use must be in writing and submitted as early in the process as possible. An application fee should accompany the application, if applicable. The Superintendent evaluates the request to determine that the proposed use:

- Will not conflict with visitor uses,
- Will not adversely impact park operations,
- Will not cause unacceptable impacts to park resources and values, and
- Complies with applicable law, regulations, and policies.

Administrative Record. Some documents apply to the special park use program as a whole. Examples of these include, but are not limited to, procedures for processing requests, delegations of signature authority, establishment of cost recovery amounts, designation of First Amendment areas pursuant to 36 CFR 2.51 and the Superintendent's compendium.

In addition, an administrative record for each request must be created whether the request is approved or denied. This record should contain all documents that led to the agency's decision. It should memorialize the timeframe, discussions, and rationale behind the decision, including any monetary charges imposed, and should contain all documents related to issuance or denial of the permit, including letters, compliance documentation, notes, and a copy of the executed permit itself.

Park personnel should pay close attention to the creation of complete administrative records to accompany actions taken with respect to special use permit requests. If a permittee challenges the Superintendent's decision in court, these documents will form the basis to support the Superintendent's decision.

It should be noted that the NPS administrative record developed for the special park use request is separate and distinct from the "Administrative Records" provided in response to a court challenge. The "Administrative Record" filed with the court as part of the lawsuit must follow specific guidelines and formats set by the court and may require additional documents not included in the park's administrative record.

All permits, permit denials, and the associated documents must be retained in accordance with the disposition schedule approved by the National Archives and Records Administration ([DO #19](#) and attachment). Documents may be retained longer if the record continues to provide park management with useful guidance and information.

Because permit applications request names, social security and/or tax identification numbers parks are required to take any and all steps necessary to protect the privacy information contained in special park use administrative records and other documents.

Compliance. The process for granting or denying a special park use requires that the following compliance is completed and documented in the administrative record:

- The National Environmental Policy Act (NEPA). Unless the proposed special use is categorically excluded from NEPA review, the Superintendent must ensure that an environmental assessment (EA) or environmental impact statement (EIS) is prepared to

agency standards that identify reasonable alternatives both inside and outside the park, and that any additional compliance documentation is completed, including, for example, compliance with DO #77-1 (Wetland Protection) and DO #77-2 (Floodplain Management). Although the Superintendent may require the applicant to prepare the EA/EIS and other documentation, the NPS remains responsible for its content and must sign the Finding of No Significant Impact/Record of Decision FONSI/ROD.

- The National Historic Preservation Act of 1966 (NHPA). Generally, NHPA review (commonly referred to as Section 106 compliance) is incorporated into NEPA and is conducted as a step in the process. The NHPA review and final decision require consultation with the appropriate State or Tribal Historic Preservation Officer (SHPO or THPO) unless the proposed special park use has been determined to either have “no effect” on cultural resources or is a “programmatic exclusion.”
- Any other applicable law or regulation.

Regardless of who prepares the documentation, the applicant must pay all NPS costs incurred in NEPA and NHPA compliance unless exemptions to cost recovery apply (see below).

Decision to Approve or Deny a Request. The decision to either approve or deny a request must be based on an adequate administrative record. Approval of any special park use must be in the form of a written permit. The permit must include an expiration date and should contain, in the form of permit terms and conditions, safeguards for the protection of park resources and values. If the request is denied, the applicant must be informed in writing, and the letter must include the reason for the denial.

Mandatory or Discretionary. Some special park uses are expressly authorized in a park's enabling act. The enabling law may be mandatory; that is, it may *require* the NPS to allow the use (“The Secretary shall permit ...”), or it may be discretionary; that is, it may *allow* the NPS to allow the use (“The Secretary may permit ...”). In either instance, the proposed use is considered to be both authorized and appropriate, as long as safeguards are established to protect park visitors, resources, and values.

Right or Privilege. The Superintendent must also determine if the request involves a right or a privilege. A *right* is based on property ownership, statutory or treaty entitlement, or Constitutional guarantee. In general, citizens must be afforded the opportunity to exercise their rights; however, a Superintendent may establish permit conditions to protect park visitors, resources, and values.

Where there is no identified right to engage in the use, then the use is a *privilege* and the Superintendent has discretion to determine whether to issue a permit for the activity and, if so, what conditions should be included in the permit. The Superintendent should consider the request carefully and develop an appropriate administrative record to document and support the decision. The Superintendent is not obligated to issue a permit for a special park use simply because a request has been made and discretionary authority for the use exists.

Legal Authorities for NPS Cost Recovery Charges, Commercial Filming and Still Photography Location Fees, and Land and Facility Use Fees. Certain statutes expressly authorize the NPS to recover costs related to special park uses and/or charge fees for the use of park lands and facilities. These include:

- 16 U.S.C. § 3a, for cost recovery for most special park uses
- 31 U.S.C. § 9701, for land and facility charges
- 16 U.S.C. §§ 460l-6d, for cost recovery and location fees for commercial filming and certain still photography activities

Cost Recovery (16 U.S.C. § 3a). The NPS may recover from the permittee all agency costs incurred in processing the application, and monitoring the permitted activity if the request is approved. Applicants should be told early in the process that they may be responsible for reimbursing the park for all costs incurred by the park in processing the application (even if the application is denied) and monitoring the permitted activity and subsequent site restoration if necessary.

Cost recovery is not charged if:

- Cost recovery charges and facility and land use fees are prohibited by law, or
- The proposed activity is an exercise of a right, such as a First Amendment activity.

The NPS unit or office that incurred the cost retains 100% of the cost recovery monies and should use the money to defray expenses. Cost recovery for all special park uses except commercial filming and still photography permits is year-end money, must be spent in the fiscal year they were collected, and cannot be held over.

Cost Recovery for Commercial Filming and Still Photography (16 U.S.C. § 460l-6d). 16 U.S.C. § 460l-6d mandates cost recovery for commercial filming and still photography permits. These costs may not be waived. The NPS unit or office that incurred the cost retains cost recovery monies and should use the money to defray expenses. Cost recovery for commercial filming and still photography permits is no-year money and is available until expended.

Location Fees for Commercial Filming and Still Photography. 16 U.S.C. § 460l-6d mandates that the NPS collect and retain location fees for commercial filming and still photography permits. Location fees are based on the number of people associated with the permit and the length (in days) of the permit. Each park must use the location fee schedule and location fees may not be waived. Most of the location fees remain in the park and can be spent on park projects.

Land and/or Facility Fee. If a land and/or facilities fee is charged by the NPS, the fee should reflect the market value of the use requested, whenever possible. In other words, the NPS should charge the use fee based on the market value of the land and/or facilities provided by the government. This value is generally determined by comparables in the vicinity of the park. When the park collects a land and/or facilities use fee based on market value it should be the only money collected from the permittee because the cost recovery is included in the calculation of market value. In no case should the NPS collect a market value fee plus cost recovery for any permits issued. The proper approach would be to deduct the amount due to the park for cost recovery from

the market value fee. The amount deducted for cost recovery is retained by the park, and the remaining amount of money must be deposited in the U.S. Treasury, unless otherwise authorized by law.

However, if the amount of costs incurred by the park equals or exceeds the market value of the land and facilities used, the park is authorized to charge and collect the full cost recovery amount (including the amount that exceeds the market value). The park retains the funds because it is cost recovery and does not charge or collect any land or facilities use fee.

Exceptions to Collecting Cost Recovery. In certain circumstances, the Superintendent may choose to not collect cost recovery. A decision to not collect cost recovery may be appropriate in any of the following circumstances:

- Charging and collecting are not cost-effective, or
- The Superintendent wishes to waive costs and fees as a courtesy to a foreign government, or
- The permittee is a state, local, or Federal agency on official business, or
- The Superintendent determines the proposed use will promote the specific mission of the park.

Please note: These exceptions do not apply to commercial filming and still photography permits. Cost recovery and location fees for commercial filming and still photography permits are required and may not be waived.

The Superintendent should carefully consider an applicant's requests for an exemption from cost recovery charges or lands and facilities fees and must document the decision in the administrative record. It is important to be consistent and content neutral when granting these requests. Similar activities by different groups should receive similar consideration. The Servicewide implication of not recovering costs and/or lands and facilities fees should also be considered before each decision is made.

Recreation Fees and Non-Recreational Uses. Permittees who enter a park for recreational purposes are subject to the same entrance and expanded amenity (use) fees as the general public; however, persons engaging in special park uses that are not recreational in nature are exempt from entrance and expanded amenity fees. Examples of some non-recreational uses for which special park use permits are issued include the following:

- First Amendment activities
- Agricultural uses
- Grazing
- Commercial filming and certain still photography

For a discussion of non-recreational uses, see DO #22/RM-22.

Closure of Park Areas. Requests by permittees to close a park area to the general public should be considered very carefully. In general, park areas typically open to the public should not be closed to facilitate a non-public event. The regulation governing closures is found at 36 CFR 1.5 and, except

in emergency situations, requires a written determination by the superintendent justifying the closure.

Fees Charged by Permittee. Permittees occasionally ask to charge fees on park lands for those attending the permitted event. The special use permit does not give the permittee permission to collect admission or any other money associated with a special event while on park property. All monetary transactions must take place off park lands.

Solicitation of Donations by a Permittee. The Superintendent may issue a permit to solicit or accept donations in conjunction with a permitted special event or public assembly (36 CFR 2.37). The donor may not receive anything in exchange for making a donation. For example, the donor may not receive merchandise, gain entry into an event, or be allowed participation in an activity in exchange for required donation.

Donations to the NPS. The NPS has authority to accept donations of money, services, and commodities, but may not solicit them (16 U.S.C. 6). Therefore, NPS managers may not initiate discussion of a possible donation with any permit applicant nor may a representative of a cooperating association, friends group, or other park partner approach the applicant for a donation while the application is being considered, the permit is being negotiated, or the permitted activities are ongoing.

If a permit applicant offers to make a donation to the park, the offer must not in any way influence the Superintendent's decision on the application or the manner in which the permit is administered and monitored. The Superintendent must refrain from discussing the donation until after the permitted activity is completed. Superintendents may not accept a donation in lieu of payment for cost recovery, a land and facility use fee or a location fee.

For a discussion of donations to the NPS, see [DO #21](#).

Suspension of a Permitted Activity. Suspension is an immediate action taken when the permitted activity has caused a situation where the activity needs to be stopped immediately, and temporarily withdraws a permittee's permission to conduct a particular activity on park lands. Suspension halts the activity until the situation has been remedied. If the situation cannot be remedied to NPS satisfaction, the permit must be terminated.

Termination of a Permitted Activity. Termination is the permanent withdrawal of permission to conduct a particular activity often the result of a violation or breach of the terms and condition of the permit.

Renewals. A written application for the renewal of a special use or right-of-way permit should be considered as carefully as an initial application. The Superintendent must review each permit and associated administrative record before the existing permit expires. The review must determine whether the original findings in the administrative record remain valid and taking into account events since those findings were made. For example, the Superintendent should determine whether the activity is still mandatory or discretionary, whether it continues to be appropriate and consistent

with the purposes of the park, and whether the permittee has adhered to the terms and conditions of the existing permit.

8. PERMIT PROVISIONS

To protect United States/NPS interests, the Superintendent shall incorporate appropriate conditions into all special park use permits. Permits should include some or all of the following provisions:

Permit Terms and Conditions. These provide the Superintendent a mechanism with which to protect park resources, values, and the visitor experience. The permit terms and conditions impose a legal obligation on the permittee. As such, the permit must be issued to an individual acting on his/her own behalf or bona fide representative of the organization requesting the permit. The permittee's signature on the permit signifies acceptance of the conditions of the permit.

Term of the Permit. Most special park use permits may be issued for a period of up to 5 years and may be renewable on receipt of a new application. The following are exceptions:

- Permits for First Amendment activities are limited to 7 consecutive days ([36 CFR 2.51](#))
- Permits for the sale or distribution of printed matter are limited to 14 consecutive days ([36 CFR 2.52](#)).

In both these cases a permit may be extended for the same period of time by filing a new application. Certain parks in the National Capital Area within Unified Region 1 – North Atlantic - Appalachian are subject to special regulations at [36 CFR 7.96](#) which have different time limitations for these two activities.

Right-of-way permits, including those issued for telecommunications facilities may be granted for a maximum period of 10 years and may be renewable with the receipt of an application. Permission to issue right-of-way permits for a period longer than 10 years requires a written waiver of current *Management Policies* signed by the Director.

Performance Guarantee. A performance bond or deposit guarantees the permittee's compliance with permit conditions, provides a mechanism for reimbursement to the park for damage to resources and/or facilities resulting from the permittee's activities, and guarantees payment of the costs incurred by the park. The guarantee amount should be sufficient to cover all anticipated costs and should be in the form of a surety bond, certified or cashier's check, bank draft, or money order. Personal checks should not be accepted. The bond, or remainder of it, is refunded once all permit provisions are met.

Insurance. Liability insurance protects the government from negligent actions by the permittee that result in harm to persons or property. In most cases, as a condition of the permit, special park use permittees will be required to carry Commercial General Liability Insurance. Depending on the permitted activity, the Superintendent may require additional coverage such as proof of automobile liability insurance, pollution insurance, or special coverage for events where alcohol is served.

The permittee must show proof of liability coverage by submitting to the park the Insurance Services Office policy form (ISO, Certificate of Insurance), or its equivalent, endorsed by a company official naming the United States of America as “additionally insured.” The NPS should also be listed on the certificate of insurance as a certificate holder. The certificate should show all insurance coverage, liability limits, policy numbers, effective and expiration dates, aggregate limits, and any excess or umbrella coverage.

Hold Harmless/Indemnification. This condition is required for all permits. It states the Federal government, its agents, and employees, cannot be held liable for property damage, bodily injury, or death caused by the permittee’s use of park lands in connection with the permit and permittee agrees to pay the NPS for any costs incurred associated with any claims.

Tort Claim Provision. The purpose of this provision is to clarify that each agency continues to be responsible and liable for its own employees when they are occupying Federal property to the extent provided by law.

Bankruptcy Termination. This provision prevents park lands from being claimed as an asset or becoming involved in a settlement if the permittee ends up in bankruptcy proceedings. It is particularly important to include this statement in special park use permits involving agriculture, grazing, and rights-of-way.

9. PERMITS TO MANAGE THE EXERCISE OF LEGAL RIGHTS

9.1 First Amendment Activities

The First Amendment to the U.S. 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.

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, to protect park resources and values, and to protect visitor safety, the NPS may reasonably regulate certain aspects of First Amendment activities, such as the time when, the place where, and the manner in which the activity is conducted. Note that it is the conduct associated with the exercise of these rights that is regulated, and never the content of the message.

First Amendment activities are not subject to entrance fees. No matter how time consuming it may be for the park to manage First Amendment activities, cost recovery, insurance and bonding may not be required since the inability to pay cost recovery or obtain insurance or a bond might prevent the exercise of a Constitutional right.

NPS regulations pertaining to First Amendment activities are found at [36 CFR §§ 2.51](#). and [2.52](#). A First Amendment permit generally must be approved or denied within 2 business days of receipt

of a proper application. NPS regulations for designated park units in the National Capital Area within Unified Region 1 – North Atlantic – Appalachian are found [36 CFR § 7.96\(g\)](#), which contains a 48-hour response requirement. *Management Policies 2006*, section 8.6.3, also addresses First Amendment activities.

Religion. The First Amendment’s Establishment Clause prohibits the government from supporting or promoting a particular religion, religious view, or religious organization if it involves an “excessive entanglement with religion.” It does not, however, prohibit the NPS from allowing religious activities in park areas in the same way it would allow the exercise of any other First Amendment activity.

Equal Protection. Allowing one group to use an area may set the precedent for subsequent requests. The principle of equal protection generally means the NPS may not issue a permit for one group to engage in activities while prohibiting others under similar circumstances. Additionally, the NPS may not impose any obligations or restrictions on First Amendment activities that are not similarly imposed on regular visitors and special events. Any restraints imposed on activities must be administered even-handedly to all groups and individuals who are engaging in similar activities, regardless of the content of their views expressed as part of those activities. The Superintendent and park staff should be particularly careful to be neutral in his or her judgment, and not favor organizations with which they may be personally familiar, or whose "message" they may personally support.

Political Events. Political events may qualify either as First Amendment activities or special events. First Amendment activities include public demonstrations, assemblies, marches or other similar forms of public expression of opinions. Examples of an aspect of a political event that may be treated as a special event may include fund-raisers, charitable races and invitation-only receptions that are not open to the general public.

Political Activities and the Hatch Act. The Hatch Act establishes general provisions governing participation in political activities by executive branch employees (5 CFR 734.101). The Hatch Act also prohibits political activity “in any room or building occupied in the discharge of official duties.” Outdoor political activities held at NPS units including, but not limited to, rallies, speeches, press conferences, and photo-ops that use recognizable NPS resources as a backdrop may be permitted if otherwise consistent with NPS regulations. NPS employees may provide logistical support or other services to permitted political events. Employees may actively participate in a permitted event only when off duty and in civilian clothes so to not imply NPS endorsement of the event. Superintendents should contact their regional solicitor for guidance if they have any questions.

Sale of Printed Matter. The sale of certain printed matter in connection with a First Amendment activity is allowed, generally subject to a permit, as provided in 36 CFR § 2.52 or 36 CFR § 7.96(k). The term “printed matter” under 36 CFR § 2.52 is defined, at 48 Federal Register 30272 (1983), as textual printed material such as books, pamphlets, magazines and leaflets whose primary purpose is the advocacy, definition, or explanation of a group’s or individual’s political, religious, scientific, or moral beliefs. Title 36 CFR § 7.96(k) defines what printed material may be sold in its applicable park areas. Other message-bearing merchandise such as t-shirts and mugs may not be sold.

9.2 Native American Rights

The NPS will be as unrestrictive as possible in permitting American Indian tribes, Native Alaskans, Native Hawaiians, and other Pacific Islanders access to and use of traditional sacred resources for customary ceremonials. Specifically, to the extent feasible and allowable by law, the NPS will permit members of Native American tribes or groups access to park areas to perform traditional religious, ceremonial, or other customary activities at places that have been used historically for such purposes, provided the use does not damage park resources. The NPS will not direct visitor attention to the performance of religious observances unless the Native American group so wishes. (See *NPS Management Policies 2006* [section 5.3.5.3.2](#))

Requests for First Amendment activities from Native Americans are subject to the same scrutiny as other First Amendment requests. Permits for First Amendment activities are subject to time, place, and manner restrictions and should be issued with appropriate terms and conditions that protect park resources and values.

10. PERMITS RELATED TO LAND USE RIGHTS AND PRIVILEGES

10.1 Water (Riparian) Rights

Special park uses may involve the diversion, conveyance, and use of water by third parties by virtue of a pre-existing water right or by virtue of the sale or lease of NPS water.

10.1.1 Pre-Existing Water Rights

Pre-existing water rights may be present in a park when such rights were established prior to the creation of the park or when private lands are acquired for incorporation into the park. Such rights may involve the diversion, conveyance, and use entirely within the park, or diversion and conveyance within the park to a place of use outside the park. Though pre-existing rights will have limitations based on state law, Special Use Permits may be required by the park for required maintenance and construction of infrastructure to protect park resources.

10.1.2 Sale or Lease of NPS Water

Requests may be made by third parties to lease or purchase water from a park for use outside the park. If such a request is made pursuant to 16 U.S.C. § 1a-2(e), they are governed by Director's Order 35A (DO #35A). DO #35A authorizes, within the discretion of the Superintendent, such sale or lease to third parties if such parties provide public accommodations or services and if there are no reasonable alternatives. In addition, the use of the water must not cause an unacceptable impact to park resources or visitors nor lead to a dependency or increased demand on park water resources.

For more information water rights and the sale or lease of water on park lands, see DO #35A or contact the Water Rights Branch of the Water Resources Division in the Natural Resource Program Center.

10.2 RIGHTS-OF-WAY

Definition. A right-of-way (ROW) permit is a permit issued by the NPS to a third party to pass over, under, or through a NPS owned or controlled area, is discretionary and revocable, and does not convey or imply any interest in the land.

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 the use of NPS lands. If a legal authority for a requested use is not found, the park must deny the use. If an unauthorized right-of-way already exists, the park should contact the regional special park use program manager for guidance on a resolution.

Utilities. The authority for a utility right-of-way through park lands is found in 16 U.S.C. § 5 for radio, television, and other communication transmitting and receiving structures, facilities, and antennas (including cellular sites); and 16 U.S.C. § 79 for electric power, telephone, and telegraph lines, and water conduits (including sewer lines). In a few cases, park-specific laws contain additional authority for an individual park area.

Pipelines. No general authority exists for the NPS to issue a ROW for oil, gas, natural gas, synthetic liquids, gaseous fuels, or other refined product pipelines through parklands. Superintendents need to be familiar with their park's enabling act, since individual parks may have park specific authority to allow pipelines. Oil and gas lines that serve NPS facilities may be allowed through a utility contract between the service provider and the NPS under 16 U.S.C. § 1-3, so long as these lines serve only NPS facilities.

Regulations. NPS general regulations regarding right-of-way permits are located at 36 CFR Part 14. The regulations for NEPA compliance are located at 40 CFR Parts 1500 – 1508 and 43 CFR Part 16, and for NHPA at 36 CFR Part 800. Alaska-specific regulations on rights-of-way are located at 43 CFR Part 36.

General Guidelines. The following general rules govern issuance and renewal of right-of-way permits:

- A right-of-way permit is issued at the discretion of the NPS is revocable, and does not grant any interest in the land.
- A right-of-way permit is not required when property ownership, such as a previously recorded deeded easement, is involved.
- NPS policy is that right-of-way permits are issued for terms not to exceed 10 years. Permits with terms of longer than 10 years must be signed by the Director.
- Initial permits must be approved by the Regional Director. Subsequent renewals and/or amendments may be approved by the Superintendent.
- The right-of-way permit shall include appropriate terms and conditions to protect park resources and values.
- Permit terms and conditions shall include NPS monitoring of permitted construction, maintenance, restoration, and repair for the duration of the permit, and require the permittee reimburse the park for all costs incurred.

- Permits must contain a condition for removal of the facility and restoration of the right-of-way at the end of the permit.
- NPS-owned utilities do not require a right-of-way permit.

For all right-of-way permit applications, the Superintendent should:

- Request a preliminary meeting with the applicant. For large, controversial, or complex proposals, these meetings should be required. These meetings allow the Superintendent to explain park procedures and concerns to the applicant and learn about the applicant's timeframes and other concerns.
- Hold meetings with the applicant during the decision process as necessary, but especially if the Superintendent is considering denying the application. These meetings should take place prior to written notification of denial.
- Ensure that compliance actions and reviews, such as NEPA and Section 106, are conducted expeditiously consistent with applicable statutes.
- Approve or deny the request in writing.

Wilderness. No permanent road, structure, or installation (including the installation of utilities) is allowed within any eligible, study, proposed, recommended, or designated wilderness area, except as specifically provided by law. The NPS will not issue any new right-of-way permits, or widen or lengthen an existing right-of-way, in any eligible, study, proposed, recommended, or designated wilderness area. See the Wilderness Act, 16 U.S.C. 1131-1136, and DO #41 (Wilderness Preservation and Management), or consult the Chief, Wilderness Stewardship and Recreation Management for additional information. (*Management Policies 2006*, Section 6.4.8). ANILCA Title XI addresses transportation and utility systems in designated wilderness.

10.2.1 Linear Rights-of-Way

Linear rights-of-way usually involve utilities such as telephone and electrical lines and poles, canals, ditches, or water conduits.

- A linear right-of-way generally consists of a long, narrow corridor. The width of the right-of-way is described as a distance from a centerline.
- Where possible, taking into account both park resources and economic factors, new utility lines should be placed in conduit and underground.
- Each utility in a right-of-way requires a permit from the park. For example, power lines may not be added to existing, permitted telephone poles without a right-of-way permit from the park. (In this example, a permit would not be issued until written confirmation of an agreement between the two utility companies, over the use of the poles, was received by the park.)

Permittees wishing to add equipment of the type authorized by their right-of-way permit may need to request a permit amendment if the total number of lines in the permitted right-of-way increases (for example, adding additional telephone lines to existing, permitted telephone poles).

10.2.2 Wireless Telecommunication Facilities (including, but not limited to cellular, microwave, television, and radio).

A wireless telecommunication facility is authorized using a right-of-way permit. Statutory authority to issue a permit authorizing a wireless telecommunication facility is found at 16 U.S.C. 5. When considering a request for a telecommunication facility, the Superintendent will consider the entire footprint of the facility including, but not limited to, the tower, any equipment buildings, power and telephone lines, and means of access.

Applications for wireless telecommunication facilities should only be accepted when the application includes or is accompanied by an application for transmitting or receiving equipment from a properly licensed provider. Some telecommunications services do not require any license to operate, such as WiFi. However, other telecommunications services, such as cellular antennas, require a license from the Federal Communications Commission to operate. If the telecommunications service requires a license to operate, then that license must be provided with the application. In addition, applications for wireless telecommunication facilities must be processed, as closely as possible, according to the timeline and steps enumerated in RM-53.

Currently, WiFi (wireless fidelity or wireless local area networks) does not utilize a licensed portion of the Federal spectrum. If the park receives a request for installation of WiFi equipment on parklands, staff should consult the Washington Special Park Uses Program Manager.

Additional guidance is found in *NPS Management Policies, 2006*, Section 8.6.4.3, and in RM-53.

10.3 Roads and Highways

The NPS has limited legal authority to allow the construction of non-NPS roads and highways on park lands. Superintendents should work closely with NPS regional staff when considering a request for the use of park lands for any type of road or highway. Additional guidance is found in DO #87A for Park Roads and Highways and DO #87D for non-NPS Roads.

10.4 Agricultural Use

The use of parklands for agricultural use could be a right, such as a reserved use, or a privilege, approved as a discretionary decision by the Superintendent.

Agricultural activities may be conducted on park lands only if the use is:

- Specifically authorized by a park's enabling act or other law, or
- Required under a reservation of use rights arising from the acquisition of the property, or
- Conducted as a necessary and integral part of a recreational activity, or
- Required in order to maintain a historic scene.

If the park's enabling act includes agricultural use, that law should be closely examined to determine whether the authorized use is a right or a privilege. The enabling act may allow the continued use of park lands for agriculture without a permit, may require the park to issue a permit under certain terms and conditions, or give the park discretionary authority to issue a permit. The enabling act may also dictate the extent to which the park may exercise oversight of agricultural use

and charge cost recovery and land use fees. If the enabling act allows the continued use of park lands for agriculture without a permit, the park should establish a good working relationship with the individuals using park lands to ensure the protection of park resources.

If the continued use of park lands for agriculture is required as a result of a reservation of use rights arising from the acquisition of the property, the deeds should be examined closely to determine the extent of the reserved right. There may be limits associated with the reservation of use, such as type of crops or the number of years the reservation remains in effect. The park should establish a good working relationship with the individuals using park lands to ensure the protection of park resources.

If agricultural use does not appear in the park's enabling act, and is not a reserved use, the Superintendent may find authority to issue a special use permit under the general authority of 16 U.S.C. § 1-3 and the park's enabling act. However, the Superintendent should issue a permit authorizing the requested use only if NPS planning documents for the park include the objectives of restoring or perpetuating cultural or natural landscapes *and* the requested use meets those objectives without causing damage to resources

In permitting agricultural use of NPS lands, the NPS should foster best management practices that conserve soil, protect natural waterways and groundwater, control proliferation of diseases, exotic plant species and noxious weeds, and avoid contamination of the environment. The Superintendent should weigh carefully the benefits and potential impacts of the requested use. He or she should give special consideration to riparian areas, wetlands, and protection of threatened or endangered species and their habitats. A permit must not be issued if the requested activity would result in unacceptable impacts to any natural or cultural resource.

10.5 Domestic Livestock Management

General. Parks that permit livestock use, or where livestock use is managed by other agencies, must develop a livestock management plan. The NPS may issue a special use permit authorizing livestock use only when the use is:

- Specifically authorized by a park's enabling act or other law, or
- Required under a reservation of use rights arising from the acquisition of the property, or
- Conducted as a necessary and integral part of a recreational activity, or
- Required in order to maintain a historic scene.

If the park's enabling act includes livestock use, that law should be examined closely to determine whether the authorized use is a right or a privilege. The enabling act may allow the continued use of park lands for livestock use without a permit, may require the park to issue a permit under certain terms and conditions, or give the park discretionary authority to issue a permit. The enabling act may also dictate the extent to which the park may exercise oversight and charge cost recovery and land use fees.

If the enabling act allows the continued use of park lands for livestock use without a permit, the park should establish a good working relationship with the individuals using park lands to ensure the protection of park resources and values.

If the continued use of park lands for livestock use results from a reservation of use rights when the NPS acquired the property the deed(s) should be closely examined to determine the extent of the reserved right, or limits of the reservation of use such as:

- Type or number of animals
- Number of years the reservation of use remains in effect.

If the park's enabling act does not address livestock use, the Superintendent may find authority to issue a permit under the general authority of 16 U.S.C. § 1-3. The Superintendent should issue a special park use permit authorizing the requested use only if the use is an integral part of a recreational activity, or if NPS planning documents for the park include the objectives of restoring or perpetuating cultural or natural landscapes *and* the requested use meets those objectives without causing damage to resources.

The Superintendent should consider denying livestock use that has the potential to cause unacceptable impacts to park resources, values, or purposes. In particular, livestock uses that deplete or degrade non-renewable resources, or whose effects cannot be mitigated, must not be allowed. Best management practices on grazing intensity, frequency, duration and timing should be followed. The use of pelletized feed or certified weed free forage that meets the North American Weed Management Association's standards should be in the permit for all pack and saddle stock while on the trail to avoid the introduction of exotic species or noxious weeds.

The Biological Resource Management Division (Natural Resource Program Center) can provide additional technical and policy support on assessing agricultural impacts. For more information on permitting livestock activities, see also DO #38 (Property Leasing), DO #77/RM-77-3 (Domestic and Feral Livestock Management), and NPS *Management Policies 2006*, section 8.6.8 (Domestic and Feral Livestock Management) and 4.4.4 (Management of Exotic Species).

10.6 Reservations of Use and Occupancy

It is the intention of the National Park Service (NPS), when it purchases property, to remove any encumbering structures and restore the site to as close to original condition as possible. The reserved use and occupancy contract can not legally be extended. Properties may continue to be occupied through a lease (see Director's Order #38: Property Leasing), or in limited circumstances a special park use permit for temporary residency in an NPS structure provided a determination has been made that:

- Issuing the permit is in the best interest of the park and the United States; and
 - the use will not result in impairment or unacceptable impacts of park resources and values or be in conflict with the purposes for which the park was established;
- and**
- One or more of the following circumstances are met:
 1. Specific legislative authority exists to allow temporary residency; or
 2. The NPS is unable to implement the directives of park planning documents; or
 3. The structure has or may have historic significance that would be endangered if it were vacated; or

4. Extreme environmental conditions temporarily prevent the occupant from vacating the structure; or
5. The structure has served as the primary residence for the holder of the expired reservation of use and occupancy contract and the termination of the residency would create an undue hardship on the occupant.

Under a special park use permit the permittee 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 park will retain an amount equal to costs associated with issuing and managing the permit with the balance deposited into the general treasury. The special park use permit does not grant any interest in the land. (*See Reference Manual 53, Appendix 14.*)

10.7 Non-Federal Mineral Interests

The NPS has adopted regulations to specifically address the exercise of certain nonfederal mining and mineral interests. These activities are also addressed in NPS *Management Policies* 8.7, but Director's Order 53 does not address these nonfederal interests. In the case of mining operations where the mining rights arise from the 1872 Mining Law, the NPS has promulgated regulations at 36 CFR 9A and for nonfederal oil and gas operations, the regulations at 36 CFR Part 9B.

However, nonfederal mineral interests not subject to the regulations of 36 CFR 9A-9B, may be required to apply for a special use permit under 36 CFR 5.7 or another applicable regulation, in order to protect the lands and waters administered by the NPS. For example, if a person has an easement or other property right within the boundaries of a park and proposes to undertake exploratory or extraction activities within the easement, the park may require a permit with conditions to prevent adverse impacts on the park land. (see NPS *Management Policies 2006* § 8.7.3). Application of such permit conditions should not result in a taking of private property without just compensation.

11. PERMITS RELATED TO SPECIAL EVENTS OR VISITOR ACTIVITIES

11.1 Special Events

General. Special events, such as sporting events, pageants, celebrations, regattas, public spectator attractions, entertainment, ceremonies, historical reenactments, fairs, and festivals are activities that 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. Requests for special events should be processed as expeditiously as possible. Special events may be subject to a wide range of permit terms and conditions intended to protect and minimize impacts on park natural and cultural resources and visitor activities and are subject to cost recovery. The permitted activities may be required to pay a facility fee as well obtain insurance and/or submit a performance bond.

In determining whether to grant a special park use permit for a special event, the Superintendent must apply the criteria spelled out at 36 CFR § 2.50, or, for designated park units in the National

Capital Area within Unified Region 1 – North Atlantic - Appalachian, the special regulations at 36 CFR § 7.96(g). The Superintendent also should take into account any park specific special regulations that might exist. These regulations allow special events, subject to a permit, provided all of the following apply:

- There is a meaningful association between the park area and the event, and
- The event contributes to visitor understanding of the significance of the park.

Note that these criteria should be interpreted generously to allow appropriate uses. Most special park use applicants want to hold their activity in a national park to benefit from an association with the park's message or so the participants can appreciate the scenery or other significance of the park. For example, a Superintendent may choose to issue a permit for a breast cancer awareness walk-a-thon in an historic park on an established road or sidewalk. In addition, the NPS will not permit a special event that is conducted primarily for the financial benefit of organizers or participants, or is commercial in nature. Further guidance for special events is found in *NPS Management Policies 2006*, section 8.6.2 and for appropriate uses section 1.5, 8.1.1, and 8.1.2.

If a special park use request meets the above approval criteria, it still must be denied if the Superintendent finds that any of the following applies:

- The event would cause unacceptable impacts to park resources or values, or
- The event would be contrary to park purposes or would unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative locations within the park, or
- The event would unreasonably interfere with interpretive, visitor service, or other program activities, or NPS administrative activities, or
- The event would substantially impair the operation of public facilities or services of NPS concessioners or contractors, or
- The event would present a clear and present danger to public health and safety, or
- The event would result in significant conflict with other existing uses.

The Superintendent should apply these criteria from 36 CFR 2.50 carefully. Consistent application of these criteria will result in the timely processing of permit requests, reduce the possibility of permits being denied without good cause, and ensure a more uniform Servicewide process.

For further discussion on unacceptable impacts, see *NPS Management Policies 2006*, section 1.4.7.1. For further discussion of considerations relevant to granting or denying special use permits, see *Management Policies 2006*, section 8.6.2.1, and 36 CFR § 7.96(g) (special considerations for the National Capital Area).

Sale of Food or Merchandise. In certain circumstances, food and merchandise may be sold as a part of a special event under a commercial use authorization (CUA). More information is found in DO #48B/RM-48B.

Cooperating associations and NPS authorized concessioners may sell merchandise within their designated sales areas in accordance with their agreement with the NPS.

Fireworks Display. Firework displays will not be considered if it poses an unacceptable risk of wildland or structural fire, will cause unacceptable impacts on park resources or values, or will jeopardize public safety. The Superintendent, following consultation with the Regional Safety Manager, Regional Structural Fire Program Manager, and the Regional Wildland Fire Manager, may approve such displays. The permittee must comply with the requirements of the National Fire Protection Association handbook, *Code for Outdoor Display of Fireworks* (NFPA 1123). Additional guidance is provided in RM-53.

11.2 Commercial Filming and Still Photography

Section reserved until the Department of the Interior regulation on commercial filming and still photography (43 CFR Part 5) is finalized.

11.3 Native American Cultural Demonstrations

Section reserved for future use.

12. SPECIAL CONSIDERATIONS FOR NPS UNITS IN ALASKA

General. The special park use policies discussed in this Director's Order and Reference Manual 53 apply to national park units in Alaska. However, when reviewing a special park use application for park lands in Alaska, the Superintendent also must consider the provisions of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and its implementing regulations. NPS managers in Alaska must be familiar with 43 CFR Part 36, 36 CFR Part 13, and all applicable titles of ANILCA (16 U.S.C. § 3101).

Key ANILCA provisions are summarized below.

Transportation or Utility Systems. Title XI of ANILCA establishes a specific process for application, review, and approval of any transportation or utility system (TUS) in Alaska park units. As elsewhere in the National Park System, approval of a TUS in Alaska parks requires an existing statutory authority. If there is no existing authority, new legislation will be necessary if the requested use is to be allowed.

Access to In-holdings. Section 1110(b) of ANILCA requires the Secretary of the Interior to give in-holders rights necessary to assure adequate and feasible access for economic and other purposes, subject to reasonable regulation to protect the park. Section 1110(b) is an authority for granting access to in-holdings in Alaska units. Access to inholdings can be authorized across designated wilderness if necessary to provide "adequate and feasible" access. Also consult the Alaska Region *Interim Guide to Accessing Inholdings in national Park System Units in Alaska*.

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 permitted by law, and for travel to and from villages and home sites.

Temporary Access. Section 1111 of ANILCA authorizes temporary access across Alaska national park units for survey, geophysical, exploratory, or other temporary uses of non-Federal land, provided access is necessary and will not result in permanent harm to park resources.

Effect on Subsistence Uses. Any action to permit the use of park lands in Alaska requires an evaluation of the effect on subsistence uses authorized by section 810 of ANILCA.

Access to Subsistence Resources. Section 811(a) of ANILCA authorizes the appropriate use of snowmobiles, motorboats, and other means of surface transportation traditionally employed for subsistence purposes, subject to reasonable regulation.

-----*End of Director's Order*-----