1) Revised Submission: Improving Concessioner Abilities to Serve Park Visitors
2) Improve Visitor Experiences Through Concessioner-Provided Services and Infrastructure
3) Communications Plan to Support Concessions Reform
4) NPS Public Health Advisory on COVID-19
5) Industries and Companies Respond to COVID-19
6) NPS Testimony of Zero Emission Cars and Water Bottle Ban
7) NPS Campground Assessment – September 2019
8) NPS Second Century Campgrounds Overview
9) Great American Outdoors Act of 2020
10) The Great American Wine Company Boosts National Parks
11) BIO – Jonathan Wolfson, US Department of Labor
The Honorable David Bernhardt, Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Bernhardt:

We look forward to our meeting to discuss the package initially offered on August 1, 2018, to assist the Department in its efforts to implement the President’s Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” We believe that modification of regulations and policies of the National Park Service concessions program will produce changes benefitting the public, the agency, our nation’s national parks and the concessions industry.

America’s national parks are a marvelous, unifying legacy deserving our support and celebration. But America’s national parks need help. Our parks need new resources and new strategies. Vision and action shaped our national park system even as America fought and recovered from our Civil War. Vision and action advanced our national park system even in the depths of the Great Depression. Vision and action today, even as we confront global terrorism and other great challenges, can strengthen America’s national park system.

America’s national parks face challenges. National park visitation has just recently returned to levels of 25 years ago despite a growth in the US population of more than 30%, a surge in international visitors and the addition of dozens of new park units. Stagnant park visitation reflects more leisure choices today but is also the result of reduced visitor activity choices – potential visitors choose other destinations. There are fewer park campsites, fewer lodging rooms, fewer restaurant seats, fewer ranger-led walks, fewer tours and special events.

Concessioners can help overcome these challenges.

Concessioners provide vital visitor services generating $1.5 billion in gross revenues annually in about 100 park units. Concessioners pay $140+ million annually to NPS in fees and employ 25,000 people. We provide lodging, food services, gifts and souvenirs, equipment rentals, transportation and other visitor services under competitively-awarded contracts. Concessioners have been creating lasting national park memories for more than 125 years. NPS’ first Director said, "Scenery is a hollow enjoyment to the tourist who sets out in the morning after an indigestible breakfast and a fitful night's sleep on an impossible bed." Concessioners were key to the dual mission of the new agency when it was created in 1916: “... to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same ...” Today, NPS actions hamper contemporary, top-quality concessioner visitor services.

Concessioners using private funds built most of the lodges and key visitor facilities in our parks. Many of the first concession companies were affiliated with railroads. More recently, lodging was built by
companies linked to park philanthropists – including RockResorts. These buildings are now government property. Maintenance and operation of the facilities remain the responsibility of concessioners.

Concessioner assistance has been curtailed by legislation, regulations and policies beginning in 1998. Contracts were shortened to 10 years – only recently have a few longer contracts been offered. The pricing approval process has become more burdensome. Concessioner efforts to add new visitor services often fail. Despite clear direction from the Congress to make “protecting and preserving park areas” and “providing necessary and appropriate services for visitors at reasonable rates” the primary goals of concessions contracts, NPS seems focused on higher franchise fees while discouraging needed investments.

Prospectuses for concessioner services issued by NPS have not attracted companies new to the field and a substantial number have drawn no offers. NPS is pursuing higher payments by concessioners to the agency while simultaneously curtailing business expansion.

There has been very little expansion of concessioner-provided visitor services to new units of the national park system, which could address overcrowding in some units. Concessioner services are rarely contemplated in new unit planning processes. Use of NPS campgrounds has dropped because outdated facilities lack contemporary options like Wi-Fi or because water systems failures have forced closures.

There is good news. Relatively minor changes to NPS regulations and policies, and simple changes to the 1998 Act, can expand sustainable concessioner-provided visitor services in our national parks – and speed the elimination of the deferred maintenance backlog.

We appreciate your willingness to meet with us to hear our vision for improvements to the NPS concessions program. We appreciate your messages that you can’t help make changes unless you know about challenges, and appreciate your invitation to offer solutions and not just complaints. The changes we propose are the result of thousands of hours of NPHA member time and years of experience in seeking to be a great partner in America’s national parks – today and long into the future.

Members of the National Park Hospitality Association look forward to discussing our suggestions with you and developing an effective action strategy. Please contact Derrick Crandall at derrick@parkpartners.org or 703-624-0495 to let us know how we can be of assistance.

Thank you for your interest and energies.

Sincerely,

Board of Directors
National Park Hospitality Association
IMPROVING THE NPS CONCESSIONS PROGRAM
RECOMMENDATIONS BY THE NATIONAL PARK HOSPITALITY ASSOCIATION

Following discussions with the National Park Service, NPHA members shared reports with Interior leadership on March 14, 2018 and June 12, 2018 to provide recommendations for expanding and improving park visitor experiences, improving the financial sustainability of park visitor infrastructure and appealing to a broader array of visitors. This document offers specific suggestions for improvements in regulations, policies and law.
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*Standard NPS Terms for Leasehold Surrender Interest (Attachment A to Concession Contracts)* ........................................................................................................................................ A-127
A. Proposed Changes to Existing NPS Concessioner Regulations
1. Setting Appropriate Rates Based On Market Forces

Summary of proposed changes to the existing regulations

The National Park Service Concessions Management Improvement Act of 1998 (1998 Act) makes two things clear as to rates charged for concession services. First, the reasonableness of rates should, as much as possible, be based on market forces which are defined to be the basic principles of supply and demand without government controls.\(^1\) Second, the Secretary is the one who decides whether a rate is appropriate.\(^2\) The current regulations, however, do not adequately reflect the 1998 Act in this regard. Pursuant to the two principles noted above, NPHA proposes revisions to the existing regulations to ensure concession rates fully implement this congressional direction.

This proposed method for setting rates ensures a fair return to the government, which will result in more funds to maintain concession structures and reduce the maintenance backlog. In addition, these revisions will dramatically reduce the administrative burden of the existing rate determination policy and lower unnecessary government costs, again freeing more funds to address the agency’s maintenance backlog. The multiple and complex methodologies NPS has devised for reviewing rates (Competitive Market Declaration, Comparability, MSRP, Markup, Core Methods and Indexing) can all be eliminated, which will result in greater efficiency in administering these contracts. Furthermore, this streamlined method allows for more nimbleness in adjusting rates based on varying market demands.

Proposed changes to the existing regulation are indicated below by red font and strike-through:

36 C.F.R. § 51.82 Are a concessioner’s rates required to be reasonable and subject to approval by the Director?

(a) Concession contracts will permit the concessioner to set reasonable and appropriate rates and charges for visitor services provided to the public, subject to approval by the Director.

(b) A concessioner’s rates and charges to the public must be based on market forces to the maximum extent practicable. Accordingly, the Director shall include in all concession contracts, including any existing contracts, a provision which states that the Director shall approve rates and charges proposed by a concessioner as reasonable and appropriate when those rates and charges are based on existing market forces. Rates and charges shall be found to be based on existing market forces if there is a demonstrated public demand for the services and items at those rates and charges. If a concessioner’s rates and charges are not based on market forces, as demonstrated by a lack of demand for its services or items, the rates and charges should not be approved (or any prior approval should be withdrawn) and the rates and charges must be reduced to create sufficient demand. Similarly, if the rates and charges are below amounts supported by market forces, which prevents a fair return to the government, those rates and charges should

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2 Id.
not be approved (or any prior approval should be withdrawn) and the rates and charges must be increased accordingly. Unless otherwise provided in a concession contract, the reasonableness of a concessioner’s rates and charges to the public will be determined primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration of the following factors and other factors deemed relevant by the Director: length of season; peakloads; average percentage of occupancy; accessibility; availability; and costs of labor and materials; and types of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking these factors into consideration.

(c) The Director shall issue a decision in response to a request by a concessioner to change rates and charges to the public within 30 days of receipt of the request. If a decision is not issued within 30 days, the request shall be deemed approved. Before denying any such request, the Director shall obtain the recommendation from the Interior Business Center at the Department of the Interior. If the Director does not approve of the rates and charges proposed by the concessioner, the Director must provide in writing the basis for any disapproval at the time of the decision by the Director, including a copy of the recommendation from the Interior Business Center.

(The full current regulation is set out in the Appendix at page A-40.)
2. Using Leasehold Surrender Interest To Encourage Private Investment In Public Structures

Summary of proposed changes to the existing regulations

NPHA is proposing changes to the concession regulations to encourage and facilitate the use of more private capital to maintain public structures needed for concession services. While the 1998 Act intended to promote private investment in concession structures by providing a leasehold surrender interest to concessioners, the current regulations have improperly disqualified investments that otherwise would be awarded leasehold surrender interest. The result is that the current regulations actually discourage investment in concession structures.

For example, while some of the existing regulations require adherence to GAAP, others are inconsistent with this standard business accounting principle. The regulations also improperly disqualify private investment in many major rehabilitations of concession structures from being part of the leasehold surrender interest. The revisions which NPHA proposes ensure that the letter and spirit of the 1998 Act are carried out by encouraging concessioners to invest in capital expenditures. These revisions will also assist in reducing the agency’s maintenance backlog.

Proposed changes to the existing regulation are indicated below by red font and strike-through:

36 CFR § 51.51 What special terms must I know to understand leasehold surrender interest?

[]

A capital improvement is a structure, fixture, or non-removable equipment provided by a concessioner pursuant to the terms of a concession contract, and located on lands of the United States within a park area and the costs of which have been capitalized in accordance with GAAP. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this part. Concession contracts may further describe, consistent with the limitations of this part and the 1998 Act, the nature and type of specific capital improvements in which a concessioner may obtain a leasehold surrender interest.

[]

Major rehabilitation means a planned, comprehensive rehabilitation of any portion of an existing structure that:

(1) The Director approve in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

(2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure costs of which are capitalized in accordance with GAAP. In general, a major rehabilitation is rehabilitation of all or any portion of a structure that adds to the value of the structure, prolongs its useful life or adapts it to new uses. Examples of
major rehabilitations include but are not limited to adding a room, adding new built-in appliances/coolers/freezers, wall-to-wall carpeting or flooring, or improvements to a structure, such as replacing the roof, siding, storm windows, wiring, plumbing or HVAC.

Structure means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. A structure also includes all individual components and elements of the structure when the costs of construction of the component or element are included as part of the overall capitalized cost of the structure in accordance with GAAP. Landscaping that is integral to the construction of a structure is also considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

Delete from the current regulation at 36 C.F.R. § 51.51 the definition of “pre-rehabilitation value” and “replacement cost” because those definitions were included solely to implement the requirement that a major rehabilitation involve replacement costs that exceed 50% of the pre-rehabilitation value of the structure. That 50% requirement is not consistent with GAAP and should be removed.

Delete from the current regulation at 36 C.F.R. § 51.81(b) the statement “Repair and maintenance funds may not be expended to construct real property improvements, including, without limitation, capital improvements.” Removing this arbitrary prohibition would potentially allow some expenditures to increase LSI if otherwise qualified under GAAP, thus encouraging those expenditures.

(The full current regulation is set out in the Appendix at pages A31-32.)
3. Additional Services and Construction Under Existing Contracts

Summary of proposed changes to the existing regulations

In 2016, Congress amended the 1998 Act to specifically authorize NPS to amend existing concession contracts so that concessioners could provide new and additional services. NPS, however, has not enacted any regulations to implement this statutory direction. NPHA proposes the following changes to the regulations to implement this new statutory authority.

Proposed changes to the existing regulation are indicated below by red font and strike-through:

36 C.F.R. § 51.76 May the Director include in a concession contract otherwise grant a concessioner a preferential right to amend an existing concession contract to provide new or additional visitor services?

The Director may amend an existing concession contract to authorize the concessioner to provide new and additional visitor services or concession facilities, rather than issue a new concession contract, when the Director determines that the services or facilities are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located. These new and additional services and facilities may include, for example, services and facilities which assist with visitor transportation, are provided during periods where visitation is typically at lower levels or appeal to a broader spectrum of visitors or potential visitors. The Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to renewal of a concession contract under the terms of a concession contract or otherwise. For the purpose of this section, a “preferential right to new or additional services” means a right of a concessioner to a preference (in the nature of a right of first refusal or otherwise) to provide new or additional visitor services in a park area beyond those already provided by the concessioner under the terms of a concession contract. A concession contract may be amended to authorize the concessioner to provide minor additional visitor services that are a reasonable extension of the existing services. A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.

(The full current regulation is set out in the Appendix at page A-38.)

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4. Lengthening Contract Terms To Enhance Services

Summary of proposed changes to the existing regulations

Longer term concession contracts allow for more enhancements to visitor services and lowers the costs to NPS associated with the lengthy and expensive process of preparing prospectuses and evaluating proposals. While the 1998 Act states that concession contracts should generally be awarded for a term of 10 years or less, the law authorizes NPS to award contracts with terms up to 20 years when there is a benefit in a longer term. NPS has been reluctant to take full advantage of this authority.

NPHA proposes the following changes to the regulations to encourage NPS to issue contracts with terms that allow concessioners to propose greater enhancements to visitor services. NPHA also proposes changes to the regulations so that NPS can use longer contract terms to further motivate concessioners to provide the highest quality services. NPHA further proposes changes to the regulations which allows NPS to extend contracts in the event operations have been substantially interrupted or changed due to events outside the control of the concessioner, such as hurricanes, wildfires, or interruptions caused by the government.

Proposed changes to the existing regulation are indicated below by red font and strike-through:

36 C.F.R. § 51.73 What is the term of a concession contract?

A concession contract will generally be awarded for a term of 10 years or less. Unless the Director determines that the contract terms and conditions, including but not limited to the required construction of capital improvements or the costs of any other potential investments related to providing both required and authorized services, warrant a longer term, the Director shall issue a contract with a term of up to 20 years. It is the policy of the Director under these requirements that the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate. In no event will a concession contract have a term of more than 20 years (unless extended in accordance with this part).

36 C.F.R. § 51.23 May the Director extend an existing concession contract without a public solicitation?

(a) Notwithstanding the public solicitation requirements of this part, the Director may award an extension or extensions of an existing concession contract to the current concessioner for additional terms not to exceed three years in the aggregate, e.g., the Director may authorize one extension with a three year term, two consecutive extensions, one with a two year term and one with a one year term, or three consecutive extensions with a term of one year each. The Director may authorize such extensions only if the Director determines that the extension is necessary to avoid interruption of visitor services. Before determining to authorize such a contract extension, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the Federal Register of the proposed extension at least 30 days in advance of the award of the extension (except in...
emergency situations).

(b) Notwithstanding the public solicitation requirements of this part, the Director shall include terms and conditions in all current and future concession contracts that authorize the Director to adjust the contract term up to the maximum term allowed by statute in the event the Director determines the concessioner has received favorable annual ratings during the term of its contract and the Director determines that the concessioner’s demonstrated performance warrants a longer term.

(c) Notwithstanding the public solicitation requirements of this part, the Director shall include terms and conditions in all current and future concession contracts that authorize the Director to adjust the contract term up to the maximum term allowed by statute in the event there has been a substantial interruption of or change to operations due to natural events or other reasons outside the control of the concessioner, including but not limited to government ordered interruptions or changes.

(The full current regulation is set out in the Appendix at page A-25.)
5. Ensuring Appropriate Financial Returns in Prospectuses

Summary of proposed changes to the existing regulations

The 1998 Act requires NPS to set out a minimum acceptable franchise fee in each prospectus. In order to ensure the maximum number of bidders, the minimum acceptable franchise fee should be set at a low level and the competition process itself should be allowed to determine the appropriate franchise fee. NPS, however, often sets the minimum acceptable franchise fee at a high level, which reduces the number of bidders (and sometimes results in no-bid situations which ends up wasting significant costs in preparing the prospectus). High minimum franchise fees also limit offerors’ abilities to offer higher quality services to the public and make improvements which would enhance the visitor experience. NPHA proposes changes to the regulations to encourage NPS to allow the market to determine the appropriate franchise fee.

NPHA also proposes that NPS use general industry data to calculate the minimum acceptable franchise fee, rather than the incumbent’s confidential financial data. By using general industry data, NPS will be able to disclose how it calculated the minimum franchise fee which will benefit offerors. In addition, use of the incumbent’s financial data to set the minimum franchise fee can be unfair to the incumbent. For example, use of the incumbent’s financial data can eliminate its competitive advantage with regard to the proposed franchise fee where the incumbent has excelled at reducing costs and other bidders are likely to otherwise propose a lower franchise fee based on their higher costs.

Proposed changes to the existing regulation are indicated below by red font and strike-through:

36 C.F.R. §51.78- Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?

(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. The Director shall set the minimum acceptable franchise fee in the prospectus at a level which encourages maximum participation in the competition and ensures concessioners can provide necessary and appropriate facilities to the public. In determining the minimum acceptable franchise fee, the Director shall use general hospitality industry data for similar operations to determine the minimum acceptable franchise fee consistent with the foregoing direction in this section and provide a detailed basis for the assessment of the minimum franchise fee in the prospectus. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.


5 For example, in the prospectus for ferry services to Alcatraz Island, NPS stated that the minimum acceptable franchise fee was 35%.
6. Encouragement of Proposals For Entirely New Concession Operations Where None Existed Before (new section)

Summary of proposed additions to the existing regulations

While Congress has directed NPS to actively promote and provide for the enjoyment of the National Park System,⁶ NPS has rarely issued a concession contract for new concession operations in the past 50 years as part of that effort even though the public demand for these operations has clearly increased during this period. In order to encourage the agency to promote the use of our National Parks and increase the public’s outdoor activities, NPHA proposes a new regulation which would require NPS to solicit input from the public as to whether new concession services are desired. NPS can then determine if those services can be offered and, if so, issue a prospectus.

Proposed additions to the existing regulation are indicated below by red font:

How will the Director determine when to issue a prospectus for a new concession opportunity where no prior concession services had been provided?

In order to ensure the Director is meeting the statutory requirement to promote the use and enjoyment of the National Park System, the Director shall establish a process for suggesting new and appropriate visitor services within units of the National Park System where the absence of food, lodging, transportation, retail and other services are a deterrent to visitation and/or the economic stability of nearby communities. The Director shall identify necessary components of and annual deadlines for receipt of these suggestions. Up to ten suggestions shall be selected annually for review and response. If the suggestion is accepted, the Director may issue a prospectus and provide appropriate consideration for the suggesting entity in the selection process.

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B. Proposed Changes to Existing NPS Concessioner Policy
1. Improvements to the Annual Overall Ratings Process

*Summary of proposed changes to existing NPS policy*

NPHA recommends that NPS eliminate its current practice of including asterisked Special Attention Items in its Annual Overall Rating report and giving them special significance because the impact associated with a low rating for any one of these asterisked items unfairly skews the overall rating. This unfair outcome is due to the fact that a low score on any of these isolated items automatically caps the concessioner’s overall rating. This result does not always fairly represent the concessioner’s overall performance across the wide spectrum of areas evaluated.

NPHA also proposes the addition of the language in red below to the agency’s boilerplate Operating Plan which is attached to each concession contract. This new provision provides a concessioner fair notice of any perceived deficiency and the ability to correct that deficiency before it has drastic impacts on its overall rating score.

*Proposed addition to existing language in NPS’ standard Operating Plan related to AORs noted in red font:*

[The following is NPS’ standard provision included in the Operating Plans for Concession Contracts]

**Annual Overall Rating.** The Service determines and generally provides the Concessioner with an Annual Overall Rating Report by March 31 based on the Service evaluations for the preceding calendar year. The Annual Overall Rating will roll up the following individual reports and include one score and rating for the entire operating year: Operational Performance Rating Report, Administrative Compliance Report, Asset Management Evaluation, Environmental Management Program Evaluation Report, Public Health Program Evaluation Report, Risk Management Program Evaluation Report, and Visitor Satisfaction Review.

(a) Operational Performance Report. The Operational Performance Report collates the individual periodic evaluations scores and weights them if necessary.

(b) Administrative Compliance Evaluation. The Service will conduct an annual review of the Concessioner’s compliance with administrative and contractual requirements, including timely submission of the Annual Financial Report, timely and accurate submission of franchise fees, and proof of insurance requirements.

(c) Asset Management Evaluation. The Service will conduct an annual asset management evaluation and rating. The evaluation will consider performance against requirements in maintaining facilities as defined in the Concession Contract including the Maintenance Plan.
(d) Environmental Management Program Evaluation. The Service will conduct an annual evaluation of the Concessioner’s Environmental Management Program (EMP). The evaluation will consider performance in protecting natural resources, meeting environmental compliance requirements, and operating in accordance with the Concessioner’s documented EMP. Performance in addressing Concessioner environmental audit findings will also be a component of this evaluation.

(e) Public Health Program Evaluation. A representative of the Service’s Public Health Program will conduct evaluations of the Concessioner’s food and beverage operations and public showers. The Public Health official will conduct these evaluations in accordance with Service Public Health Service procedures based upon the U.S. Food Code and other applicable public health standards. The Concessioner must post a public notice in its food and beverage facilities that results of food and beverage facility public health inspections are available from the Superintendent’s Office.

(f) Risk Management Program Evaluation. The Service will annually conduct an evaluation of the Concessioner’s Risk Management Program (RMP). This evaluation will consider performance in implementing life safety and fire safety programs, and operating in accordance with the Concessioner’s documented RMP. Any life or fire safety inspections conducted by the Service will also be a component of this evaluation.

(g) Visitor Satisfaction Review. The Service will review Concessioner visitor satisfaction program results, complaints and comments on the Concessioner’s services.

Initial Annual Overall Rating Reports must be completed by February 28 of each year. When the Service determines that any item in an Annual Overall Rating Report (Form 10-AOR) is not in compliance, or when the Director otherwise issues a Marginal or Unsatisfactory rating on any of the forms for program areas (Forms 10-ADM, 10-OPR, 10-PHP, 10-RMP, 10-EMP, or 10-AMP), the Director shall provide a detailed written description of the basis for the rating. The concessioner shall then be provided a reasonable opportunity to cure the deficiency before the rating becomes final. This opportunity to cure shall not apply if the agency has previously issued the concessioner a written determination that its performance on this item is not in compliance and the concessioner has been provided a reasonable opportunity to cure. If the concessioner cures the deficiency within a reasonable time period determined by the Director, the rating shall be adjusted accordingly before becoming the final rating for the AOR. The concessioner has a right to appeal any evaluation rating to the Regional Director pursuant to the process set out in NPS-48 at Chapter 19.
2. Streamlining the Review Process Related To Maintaining Historic Concession Structures

Summary of proposed changes to existing NPS policy

NPHA proposes that NPS issue a Director’s Order which requires the agency to enter into programmatic agreements with the applicable State and Federal historic preservation authorities which establish a streamlined process for completing routine maintenance to historic concession structures. Currently, concessioners must go through a lengthy process to seek the approval of State Historic Preservation Office’s before the concessioner can conduct relatively routine maintenance to historic concession structures that will not have a significant impact on the integrity of the structures. This delay can create unsafe conditions and consumes resources of both the concessioner and NPS.

Other federal agencies, such as the US Forest Service, have addressed this issue by entering into programmatic agreements with the appropriate authorities which allow this type of maintenance to occur to historic structures on federal lands. For example, the US Forest Service has entered into a programmatic agreement with the applicable state historic preservation office and the Advisory Council On Historic Preservation which exempts certain routine maintenance on historic cabins. NPHA requests that NPS, which itself is the keeper of the National Register of Historic Places, enter into a similar national programmatic agreement (or regional agreements if required) so that the approval process for this type of routine maintenance can be streamlined. Doing so will save resources of both the NPS and concessioners which can then be devoted to improving the visitor experience.

3. Revising NPS’ Boilerplate Concession Contracts As Needed
Through A Transparent Process

Summary of proposed changes to existing NPS policy

When the 1998 Act was passed, NPS recognized the value of seeking public comment as to its proposed boilerplate concession contracts.\(^8\) As a result of those comments, NPS recognized the need to make changes and clarifications to the standard terms used in its contracts.\(^9\) NPS, however, has subsequently made changes to these same contracts without seeking any input from the public.

For example, NPS unilaterally decided to add a clause to concession contracts which forced concessioners to waive their legal rights to their existing intellectual property as a condition of bidding on the contract (and attempted to compel those holding contracts to waive this right by agreeing to an amendment to the contract). In addition and without any notice to concessioners, NPS changed a standard contract clause which had ensured that any balance of concessioner revenues set aside in a fund for potential maintenance of the structures be retained by the concessioner if those funds were not required for maintenance. NPS changed this clause to require the balance be turned over as an additional franchise fee. This change resulted in the concessioner being liable for a higher franchise fee than identified in the contract because the concessioner had already paid the franchise fee identified in its contract on these same revenues.

NPHA requests that NPS re-establish its policy of having an open and transparent process for making changes to its standard concession contract terms. NPHA proposes that NPS make any changes to its standard concession contract terms pursuant to an open and transparent process which occurs every 5 years. Under that process and as it has in the past, NPS would issue a notice of proposed changes to the concession contract terms in the Federal Register and provide the public with an opportunity to respond to those proposed changes. By seeking the input of concessioners and others, the agency will then be fully aware of potential issues related to any proposed changes before implementing any such changes.

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4. Providing More Transparency In The NPS Concessions Prospectus Process
To Improve the Quality of Prospectuses

Summary of proposed changes to existing NPS policy

NPHA requests that the NPS issue new policy guidance which increases transparency in the development of concessions prospectuses, establishes key prospectus requirements and allows for more input from the incumbent concessioners and others to improve these documents. The current prospectus process imposes significant limits on informational meetings with incumbent concessioners in advance of the release of a prospectus. This has contributed to a significant number of instances where no responsive offers have been submitted as well as other cases where the number of responsive proposals has been two or fewer. In addition, potential offerors have sought clarifications to prospectuses – including correction of inaccuracies – and have reported that NPS responses are often unhelpful and/or nonexistent. The current NPS process is excessively shielded from any input from incumbent concessioners, who have the most extensive familiarity with the operations, and the result is that NPS is unaware of any deficiencies in its prospectuses until after the prospectus is released to the public. At that point, NPS appears reluctant to fix any deficiencies which are brought to its attention, particularly where those corrections might require other changes to the prospectus terms.

The development of a prospectus for a new NPS concession contract should encourage the input of all parties with important insights into contemporary hospitality practices and destination management, including but not limited to the incumbent concessioners. This input is not prohibited by the regulations which prohibit disclosing information related to a prospectus to parties. In addition, whether undertaken by NPS staff or consultants, the prospectus development process should include opportunities for proposing innovation that enhances visitor experiences without adverse consequences on resources and other visitors. It should also include more accurate and robust economic data needed to guide private investment in capital projects and operations, as well as detailed support for the economic projections made by NPS including those used to determine the minimum franchise fee.

NPS also should encourage state and regional economic development interests and current and prospective concessioners to participate in the prospectus development process. NPS should consider refinement and expanded use of the consultation process now underway in Grand Teton National Park as well as other strategies for seeking input. For example, NPS might develop and release a draft prospectus and supporting materials for comments at least 60 days prior to release of the final prospectus soliciting proposals. Supporting materials must include a detailed discussion of how NPS estimated the projected revenues, costs and required investments which it is relying upon to prepare the prospectus. The Director should then revise the prospectus in response to any comments received if the Director determines revisions will enhance competition, improve visitor services or contribute to reductions in deferred maintenance of infrastructure used in the concession operations. The Director shall also consider comments suggesting additional concessioner services and concessioner facilities.
C. Proposed Changes to Existing Statutes Related to NPS Concession Contracts

Summary of proposed changes to existing bid protest procedures

The federal government has efficient and established procedures for disappointed offerors to challenge an official’s decision to select a party for award of a government contract. Those procedures, however, do not apply consistently to decisions regarding NPS concession contracts because of a technicality, i.e., the procedures apply to government procurements and NPS concession contracts are not consistently viewed by judges and tribunals as procurements. NPHA proposes the following statutory clarifications which would ensure that offerors seeking NPS concession contracts have the same rights as offerors seeking other federal contracts.

NPHA believes that this language can be included in an annual appropriation statute. Notably, NPS itself previously used an annual appropriation statute to revise the review authority of the U.S. Court of Federal Claims to include certain actions related to National Park Service concession contracts. Public Law 109-54 (119 Stat. 510) (Aug. 2, 2005). Specifically, NPS caused to be included in the 2006 appropriations act for the Department of the Interior and related agencies the following statement:

If the Secretary of the Interior considers the decision of any value determination proceeding conducted under a National Park Service concession contract issued prior to November 13, 1998, to misinterpret or misapply relevant contractual requirements or their underlying legal authority, the Secretary may seek, within 180 days of any such decision, the de novo review of the value determination by the United States Court of Federal Claims, and that court may make an order affirming, vacating, modifying or correcting the determination.

Thus, NPS itself has recognized that it is appropriate to use authorization statutes to amend the authority of forums to review matters related to NPS concession contracts.

Proposed language for legislation, such as an annual appropriation bill:

The Government Accountability Office’s authority for reviewing protests pursuant to 31 U.S.C. §§ 3551-3557 is amended to include the authority to review a protest by an interested party related to a solicitation for a National Park Service concession contract or award of such a contract. The procedures related to protests filed at the Government Accountability Office, including the provisions of 31 U.S.C. § 3553(c) regarding the prohibition on awards of contracts after an agency has received notice of a protest, shall apply to protests related to National Park Service concession contracts. In addition, if the Government Accountability Office determines that the National Park Service’s actions violated any applicable laws and award of the contract has been made, the Government Accountability Office shall make its recommendation without regard to the contract having been awarded.

The United States Court of Federal Claims’ jurisdictional authority pursuant to 28 U.S.C. § 1491(b)(1) is amended to include the authority to render judgment in an action by an interested party objecting to a solicitation by the National Park Service for a proposed concession contract or to a
proposed award or the award of a National Park Service concession contract or any alleged violation of statute or regulation in connection with the solicitation for or award of a National Park Service concession contract.
2. Increasing The Maximum Term Lengths Of Concession Contracts

**Summary of proposed additions to the existing statutes**

The United States has experienced substantial population growth over the past two decades but the lodging and other visitor services facilities in our National Parks have not kept up with this increase. Historically, NPS relied on its private partners to construct and undertake major renovations to this much desired infrastructure, beginning with railroads and others in the early 1900’s (the Ahwahnee Hotel, El Tovar Hotel and many more), then more recently continuing with investments by RockResorts (Jackson Lake Lodge and Caneel Bay, for example) and others. A key to encouraging the past investments were contract terms which substantially exceeded the current limit of 20 years established in 1998. Other federal agencies have recognized the importance of longer term authorizations to this investment of private funds for the public benefit, such as the Forest Service which regularly issues agreements with 40 year terms for ski resorts and other major facilities.

The establishment in 1998 of a maximum 20-year length for NPS concessions agreements has inhibited private investment and makes major investment contingent on receipt of Leasehold Surrender Interest (LSI), which is a complex process. To allow the much needed replacement, modernization and expansion of appropriate visitor services in national parks through private capital, the 1998 Act should be modified to allow the Secretary to issue concessions contracts up to 40 years in length.

**Proposed additions to the existing statutes are indicated below by red font:**

54 U.S.C. § 101914. Term of concession contracts

A concession contract entered into pursuant to this subchapter shall generally be awarded for a term of 10 15 years or less. The Secretary may award a contract for a term of up to 20 40 years if the Secretary determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term.
APPENDIX
National Park Service Concessions Management Improvement Act of 1998
§ 101911. Definitions

In this subchapter:

(1) **Advisory Board.**--The term “Advisory Board” means the National Park Service Concessions Management Advisory Board established under section 101919 of this title.

(2) **Preferential right of renewal.**--The term “preferential right of renewal” means the right of a concessioner, subject to a determination by the Secretary that the facilities or services authorized by a prior contract continue to be necessary and appropriate within the meaning of section 101912 of this title, to match the terms and conditions of any competing proposal that the Secretary determines to be the best proposal for a proposed new concession contract that authorizes the continuation of the facilities and services provided by the concessioner under its prior contract.


§ 101912. Findings and declaration of policy

(a) **Findings.**--In furtherance of section 100101(a), Congress finds that the preservation and conservation of System unit resources and values requires that public accommodations, facilities, and services that have to be provided within those System units should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that--

(1) visitation will not unduly impair those resources and values; and

(2) development of public accommodations, facilities, and services within System units can best be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the System units.

(b) **Declaration of policy.**--It is the policy of Congress that the development of public accommodations, facilities, and services in System units shall be limited to accommodations, facilities, and services that--

(1) are necessary and appropriate for public use and enjoyment of the System unit in which they are located; and

(2) are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the System unit.

§ 101913. Award of concession contracts

In furtherance of the findings and policy stated in section 101912 of this title, and except as provided by this subchapter or otherwise authorized by law, the Secretary shall utilize concession contracts to authorize a person, corporation, or other entity to provide accommodations, facilities, and services to visitors to System units. Concession contracts shall be awarded as follows:

(1) **Competitive selection process.**--Except as otherwise provided in this section, all proposed concession contracts shall be awarded by the Secretary to the person, corporation, or other entity submitting the best proposal, as determined by the Secretary through a competitive selection process. The competitive process shall include simplified procedures for small, individually-owned entities seeking award of a concession contract.

(2) **Solicitation of proposals.**--Except as otherwise provided in this section, prior to awarding a new concession contract (including renewals or extensions of existing concession contracts) the Secretary--

   (A) shall publicly solicit proposals for the concession contract; and

   (B) in connection with the solicitation, shall--

       (i) prepare a prospectus and publish notice of its availability at least once in local or national newspapers or trade publications, by electronic means, or both, as appropriate; and

       (ii) make the prospectus available on request to all interested persons.

(3) **Information to be included in prospectus.**--The prospectus shall include the following information:

   (A) The minimum requirements for the contract as set forth in paragraph (4).

   (B) The terms and conditions of any existing concession contract relating to the services and facilities to be provided, including all fees and other forms of compensation provided to the United States by the concessioner.

   (C) Other authorized facilities or services that may be provided in a proposal.

   (D) Facilities and services to be provided by the Secretary to the concessioner, including public access, utilities, and buildings.

   (E) An estimate of the amount of compensation due an existing concessioner from a new concessioner under the terms of a prior concession contract.

   (F) A statement as to the weight to be given to each selection factor identified in the prospectus and the relative importance of those factors in the selection process.

   (G) Other information related to the proposed concession operation that is provided to the Secretary pursuant to a concession contract or is otherwise available to the Secretary, as the Secretary determines is necessary to allow for the submission of competitive proposals.

   (H) Where applicable, a description of a preferential right to the renewal of the proposed concession contract held by an existing concessioner as set forth in paragraph (7).

(4) **Consideration of proposals.**--

   (A) **Minimum requirements.**--No proposal shall be considered that fails to meet the minimum requirements as determined by the Secretary. The minimum requirements shall include the following:
(i) The minimum acceptable franchise fee or other forms of consideration to the Federal Government.

(ii) Any facilities, services, or capital investment required to be provided by the concessioner.

(iii) Measures necessary to ensure the protection, conservation, and preservation of resources of the System unit.

(B) **Rejection of proposal.**--The Secretary shall reject any proposal, regardless of the franchise fee offered, if the Secretary determines that--

(i) the person, corporation, or entity is not qualified or is not likely to provide satisfactory service; or

(ii) the proposal is not responsive to the objectives of protecting and preserving resources of the System unit and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(C) **All proposals fail to meet minimum requirements or are rejected.**--If all proposals submitted to the Secretary fail to meet the minimum requirements or are rejected by the Secretary, the Secretary shall establish new minimum contract requirements and re-initiate the competitive selection process pursuant to this section.

(D) **Terms and conditions materially amended or not incorporated in contract.**--The Secretary may not execute a concession contract that materially amends or does not incorporate the proposed terms and conditions of the concession contract as set forth in the applicable prospectus. If proposed material amendments or changes are considered appropriate by the Secretary, the Secretary shall resolicit offers for the concession contract incorporating the material amendments or changes.

(5) **Selection of the best proposal.**--

(A) **Factors in selection.**--In selecting the best proposal, the Secretary shall consider the following principal factors:

(i) The responsiveness of the proposal to the objectives of protecting, conserving, and preserving resources of the System unit and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(ii) The experience and related background of the person, corporation, or entity submitting the proposal, including the past performance and expertise of the person, corporation or entity in providing the same or similar facilities or services.

(iii) The financial capability of the person, corporation, or entity submitting the proposal.

(iv) The proposed franchise fee, except that consideration of revenue to the United States shall be subordinate to the objectives of protecting, conserving, and preserving resources of the System unit and of providing necessary and appropriate facilities to the public at reasonable rates.

(B) **Secondary factors.**--The Secretary may also consider such secondary factors as the Secretary considers appropriate.

(C) **Development of regulations.**--In developing regulations to implement this subchapter, the Secretary shall consider the extent to which plans for employment of Indians (including Native Alaskans) and involvement of businesses owned by Indians, Indian tribes, or Native Alaskans in the operation of a concession contract should be identified as a factor in the selection of a best proposal under this section.

(6) **Congressional notification.**--

(A) **In general.**--The Secretary shall submit any proposed concession contract with anticipated annual gross receipts in excess of $5,000,000 or a duration of more than 10 years to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(B) **Waiting period.**--The Secretary shall not award any proposed concession contract to which subparagraph (A) applies until at least 60 days subsequent to the notification of both Committees.
(7) Preferential right of renewal.--

(A) In general.--Except as provided in subparagraph (B), the Secretary shall not grant a concessioner a preferential right to renew a concession contract, or any other form of preference to a concession contract.

(B) Exception.--The Secretary shall grant a preferential right of renewal to an existing concessioner with respect to proposed renewals of the categories of concession contracts described by paragraph (8), subject to the requirements of that paragraph.

(C) Entitlement to award of new contract.--A concessioner that successfully exercises a preferential right of renewal in accordance with the requirements of this subchapter shall be entitled to award of the proposed new concession contract to which the preference applies.

(8) Outfitter and guide services and small contracts.--

(A) Application.--Paragraph (7) shall apply only to the following:

(i) Subject to subparagraph (B), concession contracts that solely authorize the provision of specialized backcountry outdoor recreation guide services that require the employment of specially trained and experienced guides to accompany System unit visitors in the backcountry so as to provide a safe and enjoyable experience for visitors who otherwise may not have the skills and equipment to engage in that activity.

(ii) Subject to subparagraph (C), concession contracts with anticipated annual gross receipts under $500,000.

(B) Outfitting and guide concessioners.--

(i) Description.--Outfitting and guide concessioners, where otherwise qualified, include concessioners that provide guided river running, hunting, fishing, horseback, camping, and mountaineering experiences.

(ii) When entitled to preferential right.--An outfitting and guide concessioner is entitled to a preferential right of renewal under this subchapter only if--

(I) the contract with the outfitting and guide concessioner does not grant the concessioner any interest, including any leasehold surrender interest or possessory interest, in capital improvements on land owned by the United States within a System unit, other than a capital improvement constructed by a concessioner pursuant to the terms of a concession contract prior to November 13, 1998, or constructed or owned by a concessioner or the concessioner’s predecessor before the subject land was incorporated into the System;

(II) the Secretary determines that the concessioner has operated satisfactorily during the term of the contract (including any extension); and

(III) the concessioner has submitted a responsive proposal for a proposed new concession contract that satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(C) Contract with estimated gross receipts of less than $500,000.--A concessioner that holds a concession contract that the Secretary estimates will result in gross annual receipts of less than $500,000 if renewed shall be entitled to a preferential right of renewal under this subchapter if--

(i) the Secretary has determined that the concessioner has operated satisfactorily during the term of the contract (including any extension); and

(ii) the concessioner has submitted a responsive proposal for a proposed new concession contract that satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(9) New or additional services.--The Secretary may propose to amend the applicable terms of an existing concessions contract to provide new and additional services where the Secretary determines the services are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit. Such new and
additional services shall not represent a material change to the required and authorized services as set forth in the applicable prospectus or contract.

(10) Authority of Secretary not limited.--Nothing in this subchapter shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this subchapter.

(11) Exceptions.--Notwithstanding this section, the Secretary may award, without public solicitation, the following:

(A) Temporary contract.--To avoid interruption of services to the public at a System unit, the Secretary may award a temporary concession contract or an extension of an existing concessions contract for a term not to exceed 3 years, except that prior to making the award, the Secretary shall take all reasonable and appropriate steps to consider alternatives to avoid the interruption.

(B) Contract in extraordinary circumstances.--The Secretary may award a concession contract in extraordinary circumstances where compelling and equitable considerations require the award of a concession contract to a particular party in the public interest. Award of a concession contract under this subparagraph shall not be made by the Secretary until at least 30 days after--

(i) publication in the Federal Register of notice of the Secretary’s intention to award the contract and the reasons for the action; and

(ii) submission of notice to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives.


54 U.S.C.A. § 101914

Formerly cited as 16 USCA § 5953

§ 101914. Term of concession contracts

A concession contract entered into pursuant to this subchapter shall generally be awarded for a term of 10 years or less. The Secretary may award a contract for a term of up to 20 years if the Secretary determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term.


54 U.S.C.A. § 101915

Formerly cited as 16 USCA § 5954

§ 101915. Protection of concessioner investment

(a) Definitions.--In this section:

(1) Capital improvement.--The term “capital improvement” means a structure, a fixture, or nonremovable equipment provided by a concessioner pursuant to the terms of a concession contract and located on land of the United States within a System unit.

(2) Consumer Price Index.--The term “Consumer Price Index” means--
(A) the “Consumer Price Index--All Urban Consumers” published by the Bureau of Labor Statistics of the Department of Labor; or

(B) if the Index is not published, another regularly published cost-of-living index approximating the Consumer Price Index.

(b) Leasehold surrender interest in capital improvements.--A concessioner that constructs a capital improvement on land owned by the United States within a System unit pursuant to a concession contract shall have a leasehold surrender interest in the capital improvement subject to the following terms and conditions:

(1) In general.--A concessioner shall have a leasehold surrender interest in each capital improvement constructed by a concessioner under a concession contract, consisting solely of a right to compensation for the capital improvement to the extent of the value of the concessioner’s leasehold surrender interest in the capital improvement.

(2) Pledge as security.--A leasehold surrender interest may be pledged as security for financing of a capital improvement or the acquisition of a concession contract when approved by the Secretary pursuant to this subchapter.

(3) Transfer and relinquishment or waiver of interest.--A leasehold surrender interest shall be transferred by the concessioner in connection with any transfer of the concession contract and may be relinquished or waived by the concessioner.

(4) Limit on extinguishing or taking interest.--A leasehold surrender interest shall not be extinguished by the expiration or other termination of a concession contract and may not be taken for public use except on payment of just compensation.

(5) Value of interest.--The value of a leasehold surrender interest in a capital improvement shall be an amount equal to the initial value (construction cost of the capital improvement), increased (or decreased) by the same percentage increase (or decrease) as the percentage increase (or decrease) in the Consumer Price Index, from the date of making the investment in the capital improvement by the concessioner to the date of payment of the value of the leasehold surrender interest, less depreciation of the capital improvement as evidenced by the condition and prospective serviceability in comparison with a new unit of like kind.

(6) Value of interest in certain new concession contracts.--

(A) How value is determined.--The Secretary may provide, in any new concession contract that the Secretary estimates will have a leasehold surrender interest of more than $10,000,000, that the value of any leasehold surrender interest in a capital improvement shall be based on--

(i) a reduction on an annual basis, in equal portions, over the same number of years as the time period associated with the straight line depreciation of the initial value (construction cost of the capital improvement), as provided by applicable Federal income tax laws and regulations in effect on November 12, 1998; or

(ii) an alternative formula that is consistent with the objectives of this subchapter.

(B) When alternative formula may be used.--The Secretary may use an alternative formula under subparagraph (A)(ii) only if the Secretary determines, after scrutiny of the financial and other circumstances involved in the particular concession contract (including providing notice in the Federal Register and opportunity for comment), that the alternative formula is, compared to the standard method of determining value provided for in paragraph (5), necessary to provide a fair return to the Federal Government and to foster competition for the new contract by providing a reasonable opportunity to make a profit under the new contract. If no responsive offers are received in response to a solicitation that includes the alternative formula, the concession opportunity shall be resolicited with the leasehold surrender interest value as described in paragraph (5).

(7) Increase in value of interest.--Where a concessioner, pursuant to the terms of a concession contract, makes a capital improvement to an existing capital improvement in which the concessioner has a leasehold surrender interest, the cost of the additional capital improvement shall be added to the then-current value of the concessioner’s leasehold surrender interest.

(c) Special rule for possessory interest existing before November 13, 1998.--

APPENDIX

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In general.--A concessioner that has obtained a possessory interest (as defined pursuant to the Act of October 9, 1965 (known as the National Park Service Concessions Policy Act; Public Law 89-249, 79 Stat. 969), as in effect on November 12, 1998) under the terms of a concession contract entered into before November 13, 1998, shall, on the expiration or termination of the concession contract, be entitled to receive compensation for the possessory interest improvements in the amount and manner as described by the concession contract. Where that possessory interest is not described in the existing concession contract, compensation of possessory interest shall be determined in accordance with the laws in effect on November 12, 1998.

Existing concessioner awarded a new contract.--A concessioner awarded a new concession contract to replace an existing concession contract after November 13, 1998, instead of directly receiving the possessory interest compensation, shall have a leasehold surrender interest in its existing possessory interest improvements under the terms of the new concession contract and shall carry over as the initial value of the leasehold surrender interest (instead of construction cost) an amount equal to the value of the existing possessory interest as of the termination date of the previous concession contract. In the event of a dispute between the concessioner and the Secretary as to the value of the possessory interest, the matter shall be resolved through binding arbitration.

New concessioner awarded a contract.--A new concessioner awarded a concession contract and required to pay a prior concessioner for possessory interest in prior improvements shall have a leasehold surrender interest in the prior improvements. The initial value in the leasehold surrender interest (instead of construction cost) shall be an amount equal to the value of the existing possessory interest as of the termination date of the previous concession contract.

De novo review of value determination.--If the Secretary, or either party to a value determination proceeding conducted under a Service concession contract issued before November 13, 1998, considers that the value determination decision issued pursuant to the proceeding misinterprets or misapplies relevant contractual requirements or their underlying legal authority, the Secretary or either party may seek, within 180 days after the date of the decision, de novo review of the value determination decision by the United States Court of Federal Claims. The Court of Federal Claims may make an order affirming, vacating, modifying or correcting the determination decision.

Transition to successor concessioner.--On expiration or termination of a concession contract entered into after November 13, 1998, a concessioner shall be entitled under the terms of the concession contract to receive from the United States or a successor concessioner the value of any leasehold surrender interest in a capital improvement as of the date of expiration or termination. A successor concessioner shall have a leasehold surrender interest in the capital improvement under the terms of a new concession contract and the initial value of the leasehold surrender interest in the capital improvement (instead of construction cost) shall be the amount of money the new concessioner is required to pay the prior concessioner for its leasehold surrender interest under the terms of the prior concession contract.

Title to improvements.--Title to any capital improvement constructed by a concessioner on land owned by the United States in a System unit shall be vested in the United States.

(a) In general.--A concession contract shall permit the concessioner to set reasonable and appropriate rates and charges for facilities, goods, and services provided to the public, subject to approval under subsection (b).

(b) Approval by Secretary required.--

(1) Factors to consider.--A concessioner’s rates and charges to the public shall be subject to approval by the Secretary. The approval process utilized by the Secretary shall be as prompt and as unburdensome to the concessioner as possible and shall rely on market forces to establish reasonableness of rates and charges to the maximum extent practicable. The

54 U.S.C.A. § 101916
Formerly cited as 16 USCA § 5955
§ 101916. Reasonableness of rates and charges

(a) In general.--A concession contract shall permit the concessioner to set reasonable and appropriate rates and charges for facilities, goods, and services provided to the public, subject to approval under subsection (b).

(b) Approval by Secretary required.--

(1) Factors to consider.--A concessioner’s rates and charges to the public shall be subject to approval by the Secretary. The approval process utilized by the Secretary shall be as prompt and as unburdensome to the concessioner as possible and shall rely on market forces to establish reasonableness of rates and charges to the maximum extent practicable. The
Secretary shall approve rates and charges that the Secretary determines to be reasonable and appropriate. Unless otherwise provided in the concession contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant by the Secretary:

(A) Length of season.

(B) Peakloads.

(C) Average percentage of occupancy.

(D) Accessibility.

(E) Availability and costs of labor and materials.

(F) Type of patronage.

(2) Rates and charges not to exceed market rates and charges.--Rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking into account the factors referred to in paragraph (1).

(c) Implementation of recommendations.--Not later than 6 months after receiving recommendations from the Advisory Board regarding concessioner rates and charges to the public, the Secretary shall implement the recommendations or report to Congress the reasons for not implementing the recommendations.


54 U.S.C.A. § 101917

Formerly cited as 16 USCA § 5956

§ 101917. Franchise fees

(a) In general.--A concession contract shall provide for payment to the Federal Government of a franchise fee or other monetary consideration as determined by the Secretary, on consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Probable value shall be based on a reasonable opportunity for net profit in relation to capital invested and the obligations of the concession contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving System units and of providing necessary and appropriate services for visitors at reasonable rates.

(b) Provisions to be specified in contract.--The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession contract shall be specified in the concession contract and may be modified only to reflect extraordinary unanticipated changes from the conditions anticipated as of the effective date of the concession contract. The Secretary shall include in concession contracts with a term of more than 5 years a provision that allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of extraordinary unanticipated changes. The provision shall provide for binding arbitration in the event that the Secretary and the concessioner are unable to agree on an adjustment to the franchise fee in those circumstances.

(c) Special account in Treasury.--

(1) Deposit and availability.--All franchise fees (and other monetary consideration) paid to the United States pursuant to concession contracts shall be deposited in a special account established in the Treasury. Twenty percent of the funds deposited in the special account shall be available for expenditure by the Secretary, without further appropriation, to support activities throughout the System regardless of the System unit in which the funds were collected. The funds deposited in the special account shall remain available until expended.

(2) Subaccount for each System unit.--There shall be established within the special account a subaccount for each
System unit. Each subaccount shall be credited with 80 percent of the franchise fees (and other monetary consideration) collected at a single System unit under concession contracts. The funds credited to the subaccount for a System unit shall be available for expenditure by the Secretary, without further appropriation, for use at the System unit for visitor services and for purposes of funding high-priority and urgently necessary resource management programs and operations. The funds credited to a subaccount shall remain available until expended.


54 U.S.C.A. § 101918

Formerly cited as 16 USCA § 5957

§ 101918. Transfer or conveyance of concession contracts or leasehold surrender interests

(a) Approval of Secretary.--No concession contract or leasehold surrender interest may be transferred, assigned, sold, or otherwise conveyed or pledged by a concessioner without prior written notification to, and approval by, the Secretary.

(b) Conditions.--The Secretary shall approve a transfer or conveyance described in subsection (a) unless the Secretary finds that--

(1) the individual, corporation, or other entity seeking to acquire a concession contract is not qualified or able to satisfy the terms and conditions of the concession contract;

(2) the transfer or conveyance would have an adverse impact on--

(A) the protection, conservation, or preservation of the resources of the System unit; or

(B) the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(3) the terms of the transfer or conveyance are likely, directly or indirectly, to--

(A) reduce the concessioner’s opportunity for a reasonable profit over the remaining term of the concession contract;

(B) adversely affect the quality of facilities and services provided by the concessioner; or

(C) result in a need for increased rates and charges to the public to maintain the quality of the facilities and services.

(c) Modification or renegotiation of terms.--The terms and conditions of any concession contract under this section shall not be subject to modification or open to renegotiation by the Secretary because of a transfer or conveyance described in subsection (a) unless the transfer or conveyance would have an adverse impact as described in subsection (b)(2).


54 U.S.C.A. § 101919

Formerly cited as 16 USCA § 5958

§ 101919. National Park Service Concessions Management Advisory Board

(a) Establishment and purpose.--There is a National Park Service Concessions Management Advisory Board whose purpose shall be to advise the Secretary and Service on matters relating to management of concessions in the System.

(b) Duties.--
(1) **Advice.**--The Advisory Board shall advise on each of the following:

(A) Policies and procedures intended to ensure that services and facilities provided by concessioners--

   (i) are necessary and appropriate;

   (ii) meet acceptable standards at reasonable rates with a minimum of impact on System unit resources and values; and

   (iii) provide the concessioners with a reasonable opportunity to make a profit.

(B) Ways to make Service concession programs and procedures more cost effective, more process efficient, less burdensome, and timelier.

(2) **Recommendations.**--The Advisory Board shall make recommendations to the Secretary regarding each of the following:

(A) The Service contracting with the private sector to conduct appropriate elements of concession management.

(B) Ways to make the review or approval of concessioner rates and charges to the public more efficient, less burdensome, and timelier.

(C) The nature and scope of products that qualify as Indian, Alaska Native, and Native Hawaiian handicrafts within the meaning of this subchapter.

(D) The allocation of concession fees.

(3) **Annual report.**--The Advisory Board shall provide an annual report on its activities to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(c) **Advisory Board membership.**--Members of the Advisory Board shall be appointed on a staggered basis by the Secretary for a term not to exceed 4 years and shall serve at the pleasure of the Secretary. The Advisory Board shall be comprised of not more than 7 individuals appointed from among citizens of the United States not in the employment of the Federal Government and not in the employment of or having an interest in a Service concession. Of the 7 members of the Advisory Board--

   (1) one member shall be privately employed in the hospitality industry and have both broad knowledge of hotel or food service management and experience in the parks and recreation concession business;

   (2) one member shall be privately employed in the tourism industry;

   (3) one member shall be privately employed in the accounting industry;

   (4) one member shall be privately employed in the outfitting and guide industry;

   (5) one member shall be a State government employee with expertise in park concession management;

   (6) one member shall be active in promotion of traditional arts and crafts; and

   (7) one member shall be active in a nonprofit conservation organization involved in parks and recreation programs.

(d) **Service on Advisory Board.**--Service of an individual as a member of the Advisory Board shall not be deemed to be service or employment bringing the individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of individuals, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Advisory Board shall not be deemed service in an appointive or elective position in the Federal Government for purposes of section 8344 of title 5 or other comparable provisions of Federal law.
(e) **Termination.**--The Advisory Board shall continue to exist until December 31, 2009. In all other respects, it shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).


54 U.S.C.A. § 101920

Formerly cited as 16 USCA § 5959

§ 101920. Contracting for services

(a) **Contracting authorized.**--

(1) **Management elements for which contract required to maximum extent practicable.**--To the maximum extent practicable, the Secretary shall contract with private entities to conduct or assist in elements of the management of the Service concession program considered by the Secretary to be suitable for non-Federal performance. Those management elements shall include each of the following:

(A) Health and safety inspections.

(B) Quality control of concession operations and facilities.

(C) Strategic capital planning for concession facilities.

(D) Analysis of rates and charges to the public.

(2) **Management elements for which contract allowed.**--The Secretary may also contract with private entities to assist the Secretary with each of the following:

(A) Preparation of the financial aspects of prospectuses for Service concession contracts.

(B) Development of guidelines for a System capital improvement and maintenance program for all concession occupied facilities.

(C) Making recommendations to the Director regarding the conduct of annual audits of concession fee expenditures.

(b) **Other management elements.**--The Secretary shall consider, taking into account the recommendations of the Advisory Board, contracting out other elements of the concessions management program, as appropriate.

(c) **Authority of Secretary not diminished.**--Nothing in this section shall diminish the governmental responsibilities and authority of the Secretary to administer concession contracts and activities pursuant to this subchapter and section 100101(a), chapter 1003, and sections 100751(a), 100752, 100753, and 102101 of this title. The Secretary reserves the right to make the final decision or contract approval on contracting services dealing with the management of the Service concessions program under this section.

§ 101921. Multiple contracts within a System unit

If multiple concession contracts are awarded to authorize concessioners to provide the same or similar outfitting, guiding, river running, or other similar services at the same approximate location or resource within a System unit, the Secretary shall establish a comparable franchise fee structure for those contracts or similar contracts, except that the terms and conditions of any existing concession contract shall not be subject to modification or open to renegotiation by the Secretary because of an award of a new contract at the same approximate location or resource.


§ 101922. Use of nonmonetary consideration in concession contracts

Section 1302 of title 40 shall not apply to concession contracts awarded by the Secretary pursuant to this subchapter.

§ 101923. Recordkeeping requirements

(a) In general.--A concessioner and any subconcessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of a concession contract have been and are being faithfully performed. The Secretary and any authorized representative of the Secretary shall, for the purpose of audit and examination, have access to those records and to other records of the concessioner or subconcessioner pertinent to the concession contract and all terms and conditions of the concession contract.

(b) Access to records by Comptroller General.--The Comptroller General and any authorized representative of the Comptroller General shall, until the expiration of 5 calendar years after the close of the business year of each concessioner or subconcessioner, have access to and the right to examine any pertinent records described in subsection (a) of the concessioner or subconcessioner related to the contract involved.

§ 101924. Promotion of sale of Indian, Alaska Native, Native Samoan and Native Hawaiian handicrafts

(a) In general.--Promoting the sale of authentic United States Indian, Alaskan Native, Native Samoan, and Native Hawaiian handicrafts relating to the cultural, historical, and geographic characteristics of System units is encouraged, and the Secretary shall ensure that there is a continuing effort to enhance the handicraft trade where it exists and establish the trade in appropriate areas where the trade does not exist.

(b) Exemption from franchise fee.--In furtherance of the purposes of subsection (a), the revenue derived from the sale of United States Indian, Alaska Native, Native Samoan, and Native Hawaiian handicrafts shall be exempt from any franchise fee payments under this subchapter.


§ 101925. Commercial use authorizations

(a) In general.--To the extent specified in this section, the Secretary, on request, may authorize a private person, corporation, or other entity to provide services to visitors to System units through a commercial use authorization. A commercial use authorization shall not be considered to be a concession contract under this subchapter and no other section of this subchapter shall be applicable to a commercial use authorization except where expressly stated.

(b) Criteria for issuance of commercial use authorizations.--

(1) Required determinations.--The authority of this section may be used only to authorize provision of services that the Secretary determines--

(A) will have minimal impact on resources and values of a System unit; and

(B) are consistent with the purpose for which the System unit was established and with all applicable management plans and Service policies and regulations.

(2) Elements of commercial use authorization.--The Secretary shall--

(A) require payment of a reasonable fee for issuance of a commercial use authorization, the fees to remain available without further appropriation to be used, at a minimum, to recover associated management and administrative costs;

(B) require that the provision of services under a commercial use authorization be accomplished in a manner consistent to the highest practicable degree with the preservation and conservation of System unit resources and values;

(C) take appropriate steps to limit the liability of the United States arising from the provision of services under a commercial use authorization;

(D) have no authority under this section to issue more commercial use authorizations than are consistent with the preservation and proper management of System unit resources and values; and

(E) shall establish other conditions for issuance of a commercial use authorization that the Secretary determines to be appropriate for the protection of visitors, provision of adequate and appropriate visitor services, and protection and
proper management of System unit resources and values.

(c) Limitations.--Any commercial use authorization shall be limited to--

(1) commercial operations with annual gross receipts of not more than $25,000 resulting from services originating and provided solely within a System unit pursuant to the commercial use authorization;

(2) the incidental use of resources of the System unit by commercial operations that provide services originating and terminating outside the boundaries of the System unit; or

(3)(A) uses by organized children’s camps, outdoor clubs, and nonprofit institutions (including back country use); and

(B) other uses, as the Secretary determines to be appropriate.

(d) Nonprofit institutions.--Nonprofit institutions are not required to obtain commercial use authorizations unless taxable income is derived by the institution from the authorized use.

(e) Prohibition on construction.--A commercial use authorization shall not provide for the construction of any structure, fixture, or improvement on federally-owned land within the boundaries of a System unit.

(f) Duration.--The term of any commercial use authorization shall not exceed 2 years. No preferential right of renewal or similar provisions for renewal shall be granted by the Secretary.

(g) Other contracts.--A person, corporation, or other entity seeking or obtaining a commercial use authorization shall not be precluded from submitting a proposal for concession contracts.


54 U.S.C.A. § 101926

Formerly cited as 16 USCA § 5965

§ 101926. Regulations

(a) In general.--The Secretary shall prescribe regulations appropriate for the implementation of this subchapter.

(b) Contents.--The regulations--

(1) shall include appropriate provisions to ensure that concession services and facilities to be provided in a System unit are not segmented or otherwise split into separate concession contracts for the purposes of seeking to reduce anticipated annual gross receipts of a concession contract below $500,000; and

(2) shall further define the term “United States Indian, Alaskan Native, and Native Hawaiian handicrafts” for the purposes of this subchapter.


APPENDIX  Page A-16
NPS Concessions Regulations

36 CFR Part 51
What does this part cover?

This part covers the solicitation, award, and administration of concession contracts. The Director solicits, awards and administers concession contracts on behalf of the Secretary under the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 et seq. and Title IV of the National Parks Omnibus Management Act of 1998 (Public Law 105–391). The purpose of concession contracts is to authorize persons (concessioners) to provide visitor services in park areas. All concession contracts are to be consistent with the requirements of this part. In accordance with section 403 of the 1998 Act, the Director will utilize concession contracts to authorize the provision of visitor services in park areas, except as may otherwise be authorized by law. For example, the Director may enter into commercial use authorizations under section 418 of the 1998 Act and may enter into agreements with non-profit organizations for the sale of interpretive materials and conduct of interpretive programs for a fee or charge in park areas. In addition, the Director may, as part of an interpretive program agreement otherwise authorized by law, authorize a non-profit organization to provide incidental visitor services that are necessary for the conduct of the interpretive program. Nothing in this part amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) relating to revenue-producing visitor services.

What is the policy underlying concessions contracts?

It is the policy of the Congress and the Secretary that visitor services in park areas may be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair park values and resources. Development of visitor services in park areas will be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. It is also the policy of the Congress and the Secretary of the Interior that development of visitor services in park areas must be limited to those as are necessary and appropriate for public use and enjoyment of the park area in which they are located.

How are terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:


A 1965 Act concession contract is a concession contract or permit entered into under the authority of the 1965 Act.


The award of a concession contract is the establishment of a legally binding concession contract. It occurs only when the Director and a selected offeror both fully execute a concession contract.

A concession contract (or contract) means a binding written agreement between the Director and a concessioner entered under the authority of this part or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions. Concession contracts are not contracts within the meaning of 41 U.S.C. 601 et seq. (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply only to federal service contracts or other types of federal procurement actions. Concession contracts will contain such terms and conditions as are required by this part or law and as are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

A concessioner is an individual, corporation, or other legally recognized entity that duly holds a concession contract.

Director means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part. In circumstances where this part calls for an appeal to the Director, the appeal shall be considered by an official of higher authority than the official that made the disputed decision.
A franchise fee is the consideration paid to the Director by a concessioner for the privileges granted by a concession contract.

Offeror means an individual, corporation, or other legally recognized entity, including an existing concessioner, that submits a proposal for a concession contract. If the entity that is to be the concessioner is not formally in existence as of the time of submission of a proposal, a proposal must demonstrate that the individuals or organizations that intend to establish the entity that will become the concessioner have the ability and are legally obliged to cause the entity to be a qualified person as defined in this part. In addition, if the entity that will be the concessioner is not established at the time of submission of a proposal, the proposal must contain assurances satisfactory to the Director that the entity that will be the concessioner will be a qualified person as of the date of the award of the contract and otherwise have the ability to carry out the commitments made in the proposal.

Possessory interest means an interest in real property improvements as defined by the 1965 Act obtained by a concessioner under a possessory interest concession contract. Possessory interest, for the purposes of this part, does not include any interest in property in which no possessory interest, as defined by the 1965 Act, exists.

A possessory interest concession contract means a 1965 Act concession contract that provides the concessioner a possessory interest.

A preferred offeror is a concessioner that the Director determines is eligible to exercise a right of preference to the award of a qualified concession contract in accordance with this part.

A qualified concession contract is a new concession contract that the Director determines to be a qualified concession contract for right of preference purposes.

A qualified person is an individual, corporation or other legally recognized entity that the Director determines has the experience and financial ability to satisfactorily carry out the terms of a concession contract. This experience and financial ability includes, but is not limited to, the ability to protect and preserve the resources of the park area and the ability to provide satisfactory visitor services at reasonable rates to the public.

A responsive proposal means a timely submitted proposal that is determined by the Director as agreeing to all of the minimum requirements of the proposed concession contract and prospectus and as having provided the information required by the prospectus.

A right of preference is the preferential right of renewal set forth in Section 403(7)(C) of the 1998 Act which requires the Director to allow a preferred offeror the opportunity to match the terms and conditions of a competing responsive proposal that the Director has determined to be the best proposal for a qualified concession contract. A right of preference does not provide any rights of any nature to establish or negotiate the terms and conditions of a concession contract to which a right of preference may apply.

Visitor services means accommodations, facilities and services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by a person other than the Director. The fee or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services (e.g., when a lodging concessioner may provide free transportation services to guests). Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

36 C.F.R. § 51.4

How will the Director invite the general public to apply for the award of a concession contract?

(a) The Director must award all concession contracts, except as otherwise expressly provided in this part, through a public solicitation process. The public solicitation process begins with the issuance of a prospectus. The prospectus will invite the general public to submit proposals for the contract. The prospectus will describe the terms and conditions of the concession contract to be awarded and the procedures to be followed in the selection of the best proposal.
(b) Except as provided under § 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded. The Director will not issue a prospectus for a concession contract earlier than eighteen months prior to the expiration of a related existing concession contract.

36 C.F.R. § 51.5
What information will the prospectus include?

The prospectus must include the following information:

(a) The minimum requirements of the concession contract. The minimum requirements of the concession contract, include, but are not limited to the following:

1. The minimum acceptable franchise fee or other forms of consideration to the Government;
2. The minimum visitor services that the concessioner is to be authorized to provide;
3. The minimum capital investment, if any, that the concessioner must make;
4. The minimum measures that the concessioner must take to ensure the protection, conservation, and preservation of the resources of the park area; and
5. Any other minimum requirements that the new contract may specify, including, as appropriate and without limitation, measurable performance standards;

(b) The terms and conditions of a current concession contract, if any, relating to the visitor services to be provided, including all fees and other forms of compensation provided to the Director under such contract;

(c) A description of facilities and services, if any, that the Director may provide to the concessioner under the terms of the concession contract, including, but not limited to, public access, utilities and buildings;

(d) An estimate of the amount of any compensation due a current concessioner from a new concessioner under the terms of an existing or prior concession contract;

(e) A statement identifying each principal selection factor for proposals, including subfactors, if any, and secondary factors, if any, and the weight and relative importance of the principal and any secondary factors in the selection decision;

(f) Such other information related to the proposed concession contract as is provided to the Director pursuant to a concession contract or is otherwise available to the Director, as the Director determines is necessary to allow for the submission of competitive proposals. Among other such necessary information a prospectus will contain (when applicable) are the gross receipts of the current concession contract broken out by department for the three most recent years; franchise fees charged under the current concession contract for the three most recent years; merchandise inventories of the current concessioner for the three most recent years; and the depreciable fixed assets and net depreciable fixed assets of the current concessioner; and

(g) Identification of a preferred offeror for a qualified concession contract, if any, and, if a preferred offeror exists, a description of a right of preference to the award of the concession contract.

36 C.F.R. § 51.6
Will a concession contract be developed for a particular potential offeror?

The terms and conditions of a concession contract must represent the requirements of the Director in accordance with the purposes of this part and must not be developed to accommodate the capabilities or limitations of any potential offeror. The Director must not provide a current concessioner or other person any information as to the content of a proposed or issued prospectus that is not available to the general public.
Material information directly related to the prospectus and the concession contract (except when otherwise publicly available) that the Director provides to any potential offeror prior to the submission of proposals must be made available to all persons who have requested a copy of the prospectus.

The Director will publish notice of the availability of the prospectus at least once in the Commerce Business Daily or in a similar publication if the Commerce Business Daily ceases to be published. The Director may also publish notices, if determined appropriate by the Director, electronically or in local or national newspapers or trade magazines.

The Director will make the prospectus available upon request to all interested persons. The Director may charge a reasonable fee for a prospectus, not to exceed printing, binding and mailing costs.

The Director will allow an appropriate period for submission of proposals that is not less than 60 days unless the Director determines that a shorter time is appropriate in the circumstances of a particular solicitation. Proposals that are not timely submitted will not be considered by the Director.

The Director may amend a prospectus or extend the submission date, or both, prior to and on the proposal due date. The Director may cancel a solicitation at any time prior to award of the concession contract if the Director determines in his discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled, or resolicited solicitation for a concession contract.

The Director may specify in a prospectus additional solicitation and/or selection procedures consistent with the requirements of this part in the interest of enhancing competition. Such additional procedures may include, but are not limited to, issuance of a two-phased prospectus—a qualifications phase and a proposal phase. The Director will incorporate simplified administrative requirements and procedures in prospectuses for concession contracts that the Director considers are likely to be awarded to a sole proprietorship or are likely to have annual gross receipts of less than $100,000. Such simplified requirements and procedures may include, as appropriate and without limitation, a reduced application package, a shorter proposal submission period, and a reduction of proposal information requirements.

The Director will determine if proposals are responsive or non-responsive prior to or as of the date of selection of the best proposal.
36 C.F.R. § 51.14

What happens if no responsive proposals are submitted?

If no responsive proposals are submitted, the Director may cancel the solicitation, or, after cancellation, establish new contract requirements and issue a new prospectus.

36 C.F.R. § 51.15

May I clarify, amend or supplement my proposal after it is submitted?

(a) The Director may request from any offeror who has submitted a timely proposal a written clarification of its proposal. Clarification refers to making clear any ambiguities that may have been contained in a proposal but does not include amendment or supplementation of a proposal. An offeror may not amend or supplement a proposal after the submission date unless requested by the Director to do so and the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals. Permitted amendments must be limited to modifying particular aspects of proposals resulting from a general failure of offerors to understand particular requirements of a prospectus or a general failure of offerors to submit particular information required by a prospectus.

(b) A proposal may suggest changes to the terms and conditions of a proposed concession contract and still be considered as responsive so long as the suggested changes are not conditions to acceptance of the terms and conditions of the proposed concession contract. The fact that a proposal may suggest changes to the proposed concession contract does not mean that the Director may accept those changes without a resolicitation of the concession opportunity.

36 C.F.R. § 51.16

How will the Director evaluate proposals and select the best one?

(a) The Director will apply the selection factors set forth in § 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. The first four principal selection factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor set forth in § 51.17(b)(1) will be scored from zero to three. Any additional secondary selection factors set forth in the prospectus will be scored as specified in the prospectus provided that the aggregate possible point score for all additional secondary selection factors may not exceed a total of three.

(b) The Director will then assign a cumulative point score to each proposal based on the assigned score for each selection factor.

(c) The responsive proposal with the highest cumulative point score will be selected by the Director as the best proposal. If two or more responsive proposals receive the same highest point score, the Director will select as the best proposal (from among the responsive proposals with the same highest point score), the responsive proposal that the Director determines on the basis of a narrative explanation will, on an overall basis, best achieve the purposes of this part. Consideration of revenue to the United States in this determination and in scoring proposals under principal selection factor five will be subordinate to the objectives of protecting, conserving, and preserving the resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

36 C.F.R. § 51.17

What are the selection factors?

(a) The five principal selection factors are:

(1) The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area;
The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates;

(3) The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract;

(4) The financial capability of the offeror to carry out its proposal; and

(5) The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

(b) The secondary selection factors are:

(1) The quality of the offeror’s proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling. A prospectus may exclude this secondary factor if the prospectus solicits proposals for a concession contract that is anticipated to have annual gross receipts of less than $100,000 and the activities that will be conducted under the contract are determined by the Director as likely to have only limited impacts on the resources of the park area; and

(2) Any other selection factors the Director may adopt in furtherance of the purposes of this part, including where appropriate and otherwise permitted by law, the extent to which a proposal calls for the employment of Indians (including Native Alaskans) and/or involvement of businesses owned by Indians, Indian tribes, Native Alaskans, or minority or women-owned businesses in operations under the proposed concession contract.

(c) A prospectus may include subfactors under each of the principal and secondary factors to describe specific elements of the selection factor.

36 C.F.R. § 51.18

When must the Director reject a proposal?

The Director must reject any proposal received, regardless of the franchise fee offered, if the Director makes any of the following determinations: the offeror is not a qualified person as defined in this part; The offeror is not likely to provide satisfactory service; the proposal is not a responsive proposal as defined in this part; or, the proposal is not responsive to the objectives of protecting and preserving the resources of the park area and of providing necessary and appropriate services to the public at reasonable rates.

36 C.F.R. § 51.19

Must the Director award the concession contract that is set forth in the prospectus?

Except for incorporating into the concession contract appropriate elements of the best proposal, the Director must not award a concession contract which materially amends or does not incorporate the terms and conditions of the concession contract as set forth in the prospectus.

36 C.F.R. § 51.20

Does this part limit the authority of the Director?

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms.
**36 C.F.R. § 51.21**

*When must the selected offeror execute the concession contract?*

The selected offeror must execute the concession contract promptly after selection of the best proposal and within the time established by the Director. If the selected offeror fails to execute the concession contract in this period, the Director may select another responsive proposal or may cancel the selection and resolicit the concession contract.

**36 C.F.R. § 51.22**

*When may the Director award the concession contract?*

Before awarding a concession contract with anticipated annual gross receipts in excess of $5,000,000 or of more than 10 years in duration, the Director must submit the concession contract to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Director must not award any such concession contract until 60 days after the submission. Award of these contracts may not be made without the Director’s written approval. The Director may not delegate this approval except to a Deputy Director or an Associate Director. The Director may award a concession contract that is not subject to these or other special award requirements at any time after selection of the best proposal and execution of the concession contract by the offeror.

**36 C.F.R. § 51.23**

*May the Director extend an existing concession contract without a public solicitation?*

Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively an extension or extensions of an existing concession contract to the current concessioner for additional terms not to exceed three years in the aggregate, e.g., the Director may award one extension with a three year term, two consecutive extensions, one with a two year term and one with a one year term, or three consecutive extensions with a term of one year each. The Director may award such extensions only if the Director determines that the extension is necessary to avoid interruption of visitor services. Before determining to award such a contract extension, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the Federal Register of the proposed extension at least 30 days in advance of the award of the extension (except in emergency situations).

**36 C.F.R. § 51.24**

*May the Director award a temporary concession contract without a public solicitation?*

(a) Notwithstanding the public solicitation requirements of this part, the Director may non-competitively award a temporary concession contract or contracts for consecutive terms not to exceed three years in the aggregate—e.g., the Director may award one temporary contract with a three year term; two consecutive temporary contracts, one with a two year term and one with a one year term; or three consecutive temporary contracts with a term of one year each—to any qualified person for the conduct of particular visitor services in a park area if the Director determines that the award is necessary to avoid interruption of visitor services. Before determining to award a temporary concession contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the Federal Register of the proposed temporary concession contract at least 30 days in advance of its award (except in emergency situations). A temporary concession contract may not be extended. A temporary concession contract may be awarded to continue visitor services that were provided under an extended concession contract pursuant to the terms and conditions in this paragraph. A temporary concession contract awarded under the authority of the prior sentence will be considered as a contract extension for purposes of determining the existence of a preferred offeror under § 51.44.

(b) [Reserved]

(c) A concessioner holding a temporary concession contract will not be eligible for a right of preference to a qualified concession contract that replaces a temporary contract unless the concessioner holding the temporary concession contract was determined or was eligible to be determined a preferred offeror under an extended concession contract that was replaced by a temporary concession contract under paragraph (a) of this section.
36 C.F.R. § 51.25
Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award a concession contract non-competitively to any qualified person if the Director determines both that such an award is otherwise consistent with the requirements of this part and that extraordinary circumstances exist under which compelling and equitable considerations require the award of the concession contract to a particular qualified person in the public interest. Indisputable equitable considerations must be the determinate of such circumstances. The Director must publish a notice of his intention to award a concession contract to a specified person under these circumstances and the reasons for the proposed award in the Federal Register at least 60 days before the concession contract is awarded. In addition, the Director also must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives at least 60 days before the contract is awarded. The Director must personally approve any such award and may only do so with the prior written approval of the Secretary.

36 C.F.R. § 51.26
What solicitation, selection and award procedures apply when a preferred offeror exists?

The solicitation, selection and award procedures described in this part will apply to the solicitation, selection and award of contracts for which a preferred offeror exists, except as modified by this subpart, subpart F and other sections of this part related to preferred offerors and/or a right of preference.

36 C.F.R. § 51.27
Who is a preferred offeror and what are a preferred offeror’s rights to the award of a new concession contract?

(a) A preferred offeror is a concessioner that the Director has determined is eligible to exercise a right of preference to the award of a qualified new concession contract in accordance with this part.

(b) A right of preference is the right of a preferred offeror, if it submits a responsive proposal for a qualified concession contract, to match in accordance with the requirements of this part the terms and conditions of a competing proposal that the Director has determined to be the best responsive proposal.

36 C.F.R. § 51.28
When will the Director determine whether a concessioner is a preferred offeror?

Subject to §§ 51.46 and 51.47, the Director will determine whether a concessioner is a preferred offeror in accordance with this part no later than the date of issuance of a prospectus for the applicable new concession contract.

36 C.F.R. § 51.29
How will I know when a preferred offeror exists?

If the Director has determined that a preferred offeror exists for a qualified concession contract under this part, the Director will identify the preferred offeror in the applicable prospectus and describe the preferred offeror’s right of preference.

36 C.F.R. § 51.30
What must a preferred offeror do before it may exercise a right of preference?

A preferred offeror must submit a responsive proposal pursuant to the terms of an applicable prospectus for a qualified concession contract if the preferred offeror wishes to exercise a right of preference.
36 C.F.R. § 51.31

What happens if a preferred offeror does not submit a responsive proposal?

If a preferred offeror fails to submit a responsive proposal, the offeror may not exercise a right of preference. The concession contract will be awarded to the offeror submitting the best responsive proposal.

36 C.F.R. § 51.32

What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?

If the Director determines that a proposal other than the responsive proposal submitted by a preferred offeror is the best proposal submitted for a qualified concession contract, then the Director must advise the preferred offeror of the better terms and conditions of the best proposal and permit the preferred offeror to amend its proposal to match them. An amended proposal must match the better terms and conditions of the best proposal as determined by the Director. If the preferred offeror duly amends its proposal within the time period allowed by the Director, and the Director determines that the amended proposal matches the better terms and conditions of the best proposal, then the Director must select the preferred offeror for award of the contract upon the amended terms and conditions, subject to other applicable requirements of this part.

36 C.F.R. § 51.33

What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?

If a preferred offeror does not amend its proposal to meet the terms and conditions of the best proposal within the time period allowed by the Director, the Director will select for award of the contract the offeror that submitted the best responsive proposal.

36 C.F.R. § 51.34

What will the Director do if a selected preferred offeror does not timely execute the new concession contract?

If a selected preferred offeror fails to execute the concession contract in the time period specified by the Director, the Director either will select for award of the concession contract the offeror that submitted the best responsive proposal, or will cancel the solicitation and may resolicit the concession contract but only without recognition of a preferred offeror or right of preference.

36 C.F.R. § 51.35

What happens to a right of preference if the Director receives no responsive proposals?

If the Director receives no responsive proposals, including a responsive proposal from a preferred offeror, in response to a prospectus for a qualified concession contract for which a preferred offeror exists, the Director must cancel the solicitation and may resolicit the concession contract or take other appropriate action in accordance with this part. No right of preference will apply to a concession contract resolicited under this section unless the contract is resolicited upon terms and conditions materially more favorable to offerors than those contained in the original contract.

36 C.F.R. § 51.36

What conditions must be met before the Director determines that a concessioner is a preferred offeror?

A concessioner is a preferred offeror if the Director determines that the following conditions are met:

(a) The concessioner was a satisfactory concessioner during the term of its concession contract as determined under this part;
(b) The applicable new contract is a qualified concession contract as determined under this part; and

(c) If applicable, the concessioner’s previous concession contract was an outfitter and guide concession contract as determined under this part.

36 C.F.R. § 51.37

How will the Director determine that a new concession contract is a qualified concession contract?

A new concession contract is a qualified concession contract if the Director determines that:

(a) The new concession contract provides for the continuation of the visitor services authorized under a previous concession contract. The visitor services to be continued under the new contract may be expanded or diminished in scope but, for purposes of a qualified concession contract, may not materially differ in nature and type from those authorized under the previous concession contract; and either

(b) The new concession contract that is to replace the previous concession contract is estimated to result in, as determined by the Director, annual gross receipts of less than $500,000 in the first 12 months of its term; or

(c) The new concession contract is an outfitter and guide concession contract as described in this part.

36 C.F.R. § 51.38

How will the Director determine that a concession contract is an outfitter and guide concession contract?

The Director will determine that a concession contract is an outfitter and guide concession contract if the Director determines that:

(a) The concession contract solely authorizes or requires (except for park area access purposes) the conduct of specialized outdoor recreation guide services in the backcountry of a park area; and

(b) The conduct of operations under the concession contract requires employment of specially trained and experienced guides to accompany park visitors who otherwise may not have the skills and equipment to engage in the activity and to provide a safe and enjoyable experience for these visitors.

36 C.F.R. § 51.39

What are some examples of outfitter and guide concession contracts?

Outfitter and guide concession contracts may include, but are not limited to, concession contracts which solely authorize or require the guided conduct of river running, hunting (where otherwise lawful in a park area), fishing, horseback, camping, and mountaineering activities in the backcountry of a park area.

36 C.F.R. § 51.40

What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?

Determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area will be made on a park-by-park basis, taking into account the park area’s particular geographic circumstances. Factors that generally may indicate that outfitter and guide operations are conducted in the backcountry of a park area include, without limitation, the fact that:

(a) The operations occur in areas remote from roads and developed areas;

(b) The operations are conducted within a designated natural area of a park area;

(c) The operations occur in areas where search and rescue support is not readily available; and

(d) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

APPENDIX
36 C.F.R. § 51.41

If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?

The Director will find that a concession contract is not an outfitter and guide contract if the contract grants any compensable interest in real property improvements on lands owned by the United States within a park area.

36 C.F.R. § 51.42

Are there exceptions to this compensable interest prohibition?

Two exceptions to this compensable interest prohibition exist:

(a) The prohibition will not apply to real property improvements lawfully constructed by a concessioner with the written approval of the Director in accordance with the express terms of a 1965 Act concession contract; and

(b) The prohibition will not apply to real property improvements constructed and owned in fee simple by a concessioner or owned in fee simple by a concessioner’s predecessor before the land on which they were constructed was included within the boundaries of the applicable park area.

36 C.F.R. § 51.43

Who will make the determination that a concession contract is an outfitter and guide contract?

Only a Deputy Director or an Associate Director will make the determination that a concession contract is or is not an outfitter and guide contract.

36 C.F.R. § 51.44

How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?

To be a satisfactory concessioner for the purposes of a right of preference, the Director must determine that the concessioner operated satisfactorily on an overall basis during the term of its applicable concession contract, including extensions of the contract. The Director will base this determination in consideration of annual evaluations made by the Director of the concessioner’s performance under the terms of the applicable concession contract and other relevant facts and circumstances. The Director must determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract if the annual evaluations of the concessioner made subsequent to May 17, 2000 are less than satisfactory for any two or more years of operation under the concession contract.

36 C.F.R. § 51.45

Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?

The Director will determine that a concessioner has operated satisfactorily on an overall basis during the term of a concession contract only if the concessioner (including a new concessioner resulting from an assignment as described in this part, including, without limit, an assignment of a controlling interest in a concessioner as defined in this part) has or will have operated for more than two years under a concession contract with a term of more than five years or for one year under a concession contract with a term of five years or less. For purposes of this section, a new concessioner’s first day of operation under an assigned concession contract (or as a new concessioner after approval of an assignment of a controlling interest in a concessioner) will be the day the Director approves the assignment pursuant to this part. If the Director determines that an assignment was compelled by circumstances beyond the control of the assigning concessioner, the Director may make an exception to the requirements of this section.
May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?

The Director may determine that a concessioner has not operated satisfactorily on an overall basis during the term of a current concession contract, and therefore is not a preferred offeror, after a prospectus for a new contract has been issued and prior to the selection of the best proposal submitted in response to a prospectus. In circumstances where the usual time of an annual evaluation of a concessioner’s performance may not occur until after the selection of the best proposal submitted in response to a prospectus, the Director will make an annual performance evaluation based on a shortened operations period prior to the selection of the best proposal. Such shorter operations period, however, must encompass at least 6 months of operations from the previous annual performance evaluation. In the event the concessioner receives a second less than satisfactory annual evaluation (including, without limitation, one based on a shortened operations period), the prospectus must be amended to delete a right of preference or canceled and reissued without recognition of a right of preference to the new concession contract.

How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?

(a) Except as stated in paragraph (b) of this section, any person may appeal to the Director a determination that a concessioner is or is not a preferred offeror for the purposes of a right of preference in renewal, including, without limitation, whether the applicable new concession contract is or is not a qualified concession contract as described in this part. This appeal must specify the grounds for the appeal and be received by the Director in writing no later than 30 days after the date of the determination. If applicable, the Director may extend the submission date for an appeal under this section upon request by the concessioner if the Director determines that good cause for an extension exists.

(b) The appeal provided by this section will not apply to determinations that a concessioner is not a preferred offeror as a consequence of two or more less than satisfactory annual evaluations as described in this part as the concessioner is given an opportunity to appeal those evaluations after they are made in accordance with applicable administrative guidelines.

(c) The Director must consider an appeal under this section personally or must authorize a Deputy Director or Associate Director to consider the appeal. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal, other written information available, and the requirements of this part. The written decision on the appeal must be issued by the date of selection of the best proposal submitted in response to a prospectus. If the appeal results in a concessioner being determined a preferred offeror, then the concessioner will have a right of preference to the qualified concession contract as described in and subject to the conditions of this part, including, but not limited to, the obligation to submit a responsive proposal pursuant to the terms of the related prospectus. If the appeal results in a determination that a concessioner is not a preferred offeror, no right of preference will apply to the award of the related concession contract and the award will be made in accordance with the requirements of this part.

(d) No person will be considered as having exhausted administrative remedies with respect to a determination by the Director that a concessioner is or is not a preferred offeror until the Director issues a written decision in response to an appeal submitted pursuant to this section, or, where applicable, pursuant to an appeal provided by the administrative guidelines described in paragraph (b) of this section. The decision of the Director is final agency action.

What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?

Nothing in this part will limit the right of the Director to terminate a concession contract pursuant to its terms at any time for less than satisfactory performance or otherwise. If a concession contract is terminated for less than satisfactory performance or other breach, the terminated concessioner, even if otherwise qualified, will not be eligible to be a preferred offeror. The fact that the Director may not have terminated a concession contract for less than satisfactory performance or other breach will not limit the authority of the Director to determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract.
May the Director grant a right of preference except in accordance with this part?

The Director may not grant a concessioner or any other person a right of preference or any other form of entitlement of any nature to a new concession contract, except in accordance with this part or in accordance with 36 CFR part 13.

Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

The existence of a preferred offeror does not limit the authority of the Director to establish, in accordance with this part, the terms and conditions of a new concession contract, including, but not limited to, terms and conditions that modify the terms and conditions of a prior concession contract.

What special terms must I know to understand leasehold surrender interest?

To understand leasehold surrender interest, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

Arbitration means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this subpart or subpart H of this part will utilize the following procedures unless otherwise agreed by the concessioner and the Director. One member of the arbitration panel will be selected by the concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Adjudicative procedures are not encouraged but may be adopted by the panel if determined necessary in the circumstances of the dispute. Determinations must be made by a majority of the members of the panel and will be binding on the concessioner and the Director.

A capital improvement is a structure, fixture, or non-removable equipment provided by a concessioner pursuant to the terms of a concession contract and located on lands of the United States within a park area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this part. Concession contracts may further describe, consistent with the limitations of this part and the 1998 Act, the nature and type of specific capital improvements in which a concessioner may obtain a leasehold surrender interest.

Construction cost of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the concessioner in accordance with Generally Accepted Accounting Principals (GAAP). The term “construct” or “construction” as used in this part also means “install” or “installation” of fixtures where applicable.

Consumer Price Index means the national “Consumer Price Index—All Urban Consumers” published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

Depreciation means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

Eligible direct costs means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor’s shack and temporary...
fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor’s (and subcontractor’s) profit and overhead (including job supervision, worker’s compensation insurance and fire, liability, and unemployment insurance).

Eligible indirect costs means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the concessioner are not eligible indirect costs.

Fixtures and non-removable equipment are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) constructed by a concessioner pursuant to the terms of a leasehold surrender interest concession contract are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in this part, the term “fixture” as used in this part includes the term “non-removable equipment.”

Leasehold surrender interest solely means a right to payment in accordance with this part for related capital improvements that a concessioner makes or provides within a park area on lands owned by the United States pursuant to this part and under the terms and conditions of an applicable concession contract. The existence of a leasehold surrender interest does not give the concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

Leasehold surrender interest concession contract means a concession contract that provides for leasehold surrender interest in capital improvements.

Leasehold surrender interest value means the amount of compensation a concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this part. Unless otherwise provided by the terms of a leasehold surrender interest concession contract under the authority of section 405(a)(4) of the 1998 Act, leasehold surrender interest value in existing capital improvements is an amount equal to:

(1) The initial construction cost of the related capital improvement;

(2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;

(3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable leasehold surrender interest concession contract, or, if applicable, the date on which a concessioner ceases to utilize a related capital improvement (e.g., where the related capital improvement is taken out of service by the Director pursuant to the terms of a concession contract).

Major rehabilitation means a planned, comprehensive rehabilitation of an existing structure that:

(1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

(2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

Pre-rehabilitation value of an existing structure means the replacement cost of the structure less depreciation.

Real property improvements means real property other than land, including, but not limited to, capital improvements.
Related capital improvement or related fixture means a capital improvement in which a concessioner has a leasehold surrender interest.

Replacement cost means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

Structure means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

Substantial completion of a capital improvement means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

36 C.F.R. § 51.52  
How do I obtain a leasehold surrender interest?

Leasehold surrender interest concession contracts will contain appropriate leasehold surrender interest terms and conditions consistent with this part. A concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with this part and the leasehold surrender interest terms and conditions of an applicable leasehold surrender interest concession contract.

36 C.F.R. § 51.53  
When may the Director authorize the construction of a capital improvement?

The Director may only authorize or require a concessioner to construct capital improvements on park lands in accordance with this part and under the terms and conditions of a leasehold surrender interest concession contract for the conduct by the concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

36 C.F.R. § 51.54  
What must a concessioner do before beginning to construct a capital improvement?

Before beginning to construct any capital improvement, the concessioner must obtain written approval from the Director in accordance with the terms of its leasehold surrender interest concession contract. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this part. (The approval requirements of this and other sections of this part also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this part.)

36 C.F.R. § 51.55  
What must a concessioner do after substantial completion of the capital improvement?

Upon substantial completion of the construction of a capital improvement in which the concessioner is to obtain a leasehold surrender interest, the concessioner must provide the Director a detailed construction report. The construction report must be supported by actual invoices of the capital improvement’s construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this part. Invoices for additional construction costs of elements of the project that were not completed as of
the date of substantial completion may subsequently be submitted to the Director for inclusion in the project’s construction cost.

36 C.F.R. § 51.56

How will the construction cost for purposes of leasehold surrender interest value be determined?

After receiving the detailed construction report (and certification, if requested), from the concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this part. The construction cost determined by the Director will be the final determination of construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the concessioner requests arbitration of the construction cost under § 51.57. The Director may at any time review a construction cost determination (subject to arbitration under § 51.57) if the Director has reason to believe that it was based on false, misleading or incomplete information.

36 C.F.R. § 51.57

How does a concessioner request arbitration of the construction cost of a capital improvement?

If a concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director’s determination of construction cost under § 51.56. The arbitration procedures are described in § 51.51. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

36 C.F.R. § 51.58

What actions may or must the concessioner take with respect to a leasehold surrender interest?

The concessioner:

(a) May encumber a leasehold surrender interest in accordance with this part, but only for the purposes specified in this part;

(b) Where applicable, must transfer in accordance with this part its leasehold surrender interest in connection with any assignment, termination or expiration of the concession contract; and

(c) May relinquish or waive a leasehold surrender interest.

36 C.F.R. § 51.59

Will a leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?

A leasehold surrender interest may not be extinguished by the expiration or termination of a concession contract and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to this part will constitute the payment of just compensation for leasehold surrender interest within the meaning of this part and for all other purposes.
How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?

When a concessioner under a leasehold surrender interest concession contract is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the concessioner’s leasehold surrender interest value (established as of the date of expiration or termination of its prior concession contract) in the related capital improvements will be continued as the initial value (instead of initial construction cost) of the concessioner’s leasehold surrender interest under the terms of the new concession contract. No compensation will be due the concessioner for its leasehold surrender interest or otherwise in these circumstances except as provided by this part.

How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?

(a) When a concessioner is not awarded a new concession contract after expiration or termination of a leasehold surrender interest concession contract, or, the concessioner, prior to such termination or expiration, ceases to utilize under the terms of a concession contract capital improvements in which the concessioner has a leasehold surrender interest, the concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director’s control, will be the date of expiration or termination of the leasehold surrender interest contract, or the date the concessioner ceases to utilize related capital improvements under the terms of a concession contract. Depreciation of the related capital improvements will be established as of the date of expiration or termination of the concession contract, or, if applicable, the date the concessioner ceases to utilize the capital improvements under the terms of a concession contract.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of the leasehold surrender interest concession contract, or, as of the date a concessioner ceases to utilize related capital improvements under the terms of a concession contract, the payment when made will include interest on the amount that was due on the date of expiration or termination of the concession contract or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of the concession contract or the cessation of use of related capital improvements under the terms of a concession contract.

What is the process to determine the leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?

Leasehold surrender interest concession contracts must contain provisions under which the Director and the concessioner will seek to agree in advance of the expiration or other termination of the concession contract as to what the concessioner’s leasehold surrender interest value will be on a unit-by-unit basis as of the date of expiration or termination of the concession contract. In the event that agreement cannot be reached, the provisions of the leasehold surrender interest concession contract must provide for the Director to make a final determination of leasehold surrender interest value unless binding arbitration as to the value is requested by the concessioner. The arbitration procedures are described in § 51.51. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this part are final and not subject to further arbitration.

When a new concessioner pays a prior concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?

A new leasehold surrender interest concession contract awarded to a new concessioner will require the new concessioner to pay the prior concessioner its leasehold surrender interest value in existing capital improvements as determined under §

APPENDIX
51.62. The new concessioner upon payment will have a leasehold surrender interest in the related capital improvements on a unit-by-unit basis under the terms of the new leasehold surrender interest contract. Instead of initial construction cost, the initial value of such leasehold surrender interest will be the leasehold surrender interest value that the new concessioner was required to pay the prior concessioner.

36 C.F.R. § 51.64

May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?

A concessioner that, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the concessioner has a leasehold surrender interest, will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this part.

36 C.F.R. § 51.65

May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?

A concessioner that replaces an existing fixture in which the concessioner has a leasehold surrender interest with a new fixture will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

36 C.F.R. § 51.66

Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?

(a) A concession contract may require the concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the concessioner). A leasehold surrender interest will be obtained by the concessioner in such fixtures subject to the approval and determination of construction cost and other conditions contained in this part.

(b) A concession contract may require the concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (e.g., a government-constructed facility assigned to the concessioner). Upon substantial completion of the major rehabilitation, the concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

36 C.F.R. § 51.67

Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

A concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.
If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?

A concessioner that has possessory interest in real property improvements pursuant to the terms of a 1965 Act concession contract, will, if the prior concessioner does not seek or is not awarded a new concession contract upon expiration or other termination of its 1965 Act concession contract, be entitled to receive compensation for its possessory interest in the amount and manner described by the possessory interest concession contract. The concessioner shall also be entitled to receive all other compensation, including any compensation for property in which there is no possessory interest, to the extent and in the manner that the possessory interest contract may provide.

What happens if there is a dispute between the new concessioner and a prior concessioner as to the value of the prior concessioner’s possessory interest?

In case of a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner’s possessory interest, the dispute will be resolved under the procedures contained in the possessory interest concession contract. A new concessioner will not agree on the value of a prior concessioner’s possessory interest without the prior written approval of the Director unless the value is determined through the binding determination process required by the possessory interest concession contract. The Director’s written approval is to ensure that the value is consistent with the terms and conditions of the possessory interest concession contract. If a new concessioner and a prior concessioner engage in a binding process to resolve a dispute as to the value of the prior concessioner’s possessory interest, the new concessioner must allow the Director to assist the new concessioner in the dispute process to the extent requested by the Director. Nothing in this section may be construed as limiting the rights of the prior concessioner to be paid for its possessory interest or other property by a new concessioner in accordance with the terms of its concession contract.

If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner’s possessory interest?

In the event a concessioner under a 1965 Act concession contract is awarded a new concession contract replacing a possessory interest concession contract, the concessioner will obtain a leasehold surrender interest in its existing possessory interest real property improvements under the terms of the new concession contract. The concessioner will carry over as the initial value of such leasehold surrender interest (instead of initial construction cost) an amount equal to the value of its possessory interest in real property improvements as of the expiration or other termination of its possessory interest contract. This leasehold surrender interest will apply to the concessioner’s possessory interest in real property improvements even if the real property improvements are not capital improvements as defined in this part. In the event that the concessioner had a possessory interest in only a portion of a structure, depreciation for purposes of leasehold surrender interest value under the new concession contract will apply only to the portion of the structure to which the possessory interest applied. The concessioner and the Director will seek to agree on an allocation of the leasehold surrender interest value on a unit by unit basis.

What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?

Unless other procedures are agreed to by the concessioner and the Director, in the event that a concessioner under a possessory interest concession contract is awarded a new concession contract and there is a dispute between the concessioner and the Director as to the value of such possessory interest, or, a dispute as to the allocation of an established overall possessory interest value on a unit by unit basis, the value and/or allocation will be established by arbitration in accordance with the terms and conditions of this part. The arbitration procedures are described in § 51.51.
36 C.F.R. § 51.72

If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

If a new concessioner is awarded a leasehold surrender interest concession contract and is required to pay a prior concessioner for possessory interest in real property improvements, the new concessioner will have a leasehold surrender interest in the real property improvements under the terms of its new concession contract. The initial value of the leasehold surrender interest (instead of initial construction cost) will be the value of the possessory interest as of the expiration or other termination of the 1965 Act possessory interest concession contract. This leasehold surrender interest will apply even if the related possessory interest real property improvements are not capital improvements as defined in this part. In the event a new concessioner obtains a leasehold surrender interest in only a portion of a structure as a result of the acquisition of a possessory interest from a prior concessioner, depreciation for purposes of leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest applied.

36 C.F.R. § 51.73

What is the term of a concession contract?

A concession contract will generally be awarded for a term of 10 years or less unless the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate. In no event will a concession contract have a term of more than 20 years (unless extended in accordance with this part).

36 C.F.R. § 51.74

When may a concession contract be terminated by the Director?

Concession contracts will contain appropriate provisions for suspension of operations under a concession contract and for termination of a concession contract by the Director for default, including, without limitation, unsatisfactory performance, or termination when necessary to achieve the purposes of the 1998 Act. The purposes of the 1998 Act include, but are not limited to, protecting, conserving, and preserving park area resources and providing necessary and appropriate visitor services in park areas.

36 C.F.R. § 51.75

May the Director segment or split concession contracts?

The Director may not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if the purpose of such action is to establish a concession contract with anticipated annual gross receipts of less than $500,000.

36 C.F.R. § 51.76

May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?

The Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services under the terms of a concession contract or otherwise. For the purpose of this section, a “preferential right to new or additional services” means a right of a concessioner to a preference (in the nature of a right of first refusal or otherwise) to provide new or additional visitor services in a park area beyond those already provided by the concessioner under the terms of a concession contract. A concession contract may be amended to authorize the concessioner to provide minor additional visitor services that are a reasonable extension of the existing services. A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.
36 C.F.R. § 51.77
Will a concession contract provide a concessioner an exclusive right to provide visitor services?

Concession contracts will not provide in any manner an exclusive right to provide all or certain types of visitor services in a park area. The Director may limit the number of concession contracts to be awarded for the conduct of visitor services in a particular park area in furtherance of the purposes described in this part.

36 C.F.R. § 51.78
Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?

(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.

(b) The franchise fee contained in a concession contract with a term of 5 years or less may not be adjusted during the term of the contract. Concession contracts with a term of more than 5 years will contain a provision that provides for adjustment of the contract’s established franchise fee at the request of the concessioner or the Director. An adjustment will occur if the concessioner and the Director mutually determine that extraordinary, unanticipated changes occurred after the effective date of the contract that have affected or will significantly affect the probable value of the privileges granted by the contract. The concession contract will provide for arbitration if the Director and a concessioner cannot agree upon an appropriate adjustment to the franchise fee that reflects the extraordinary, unanticipated changes determined by the concessioner and the Director.

36 C.F.R. § 51.79
May the Director waive payment of a franchise fee or other payments?

The Director may not waive the concessioner’s payment of a franchise fee or other payments or consideration required by a concession contract, except that a franchise fee may be waived in part by the Director pursuant to administrative guidelines that may allow for a partial franchise fee waiver in recognition of exceptional performance by a concessioner under the terms of a concession contract. A concessioner will have no right to require the partial waiver of a franchise fee under this authority or under any related administrative guidelines.

36 C.F.R. § 51.80
How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?

If the Director awards more than one outfitter and guide concession contract that authorizes or requires the concessioners to provide the same or similar visitor services at the same approximate location or utilizing the same resource within a single park area, the Director will establish franchise fees for those concession contracts that are comparable. In establishing these comparable franchise fees, the Director will take into account, as appropriate, variations in the nature and type of visitor services authorized by particular concession contracts, including, but not limited to, length of the visitor experience, type of equipment utilized, relative expense levels, and other relevant factors. The terms and conditions of an existing concession contract will not be subject to modification or open to renegotiation by the Director because of the award of a new concession contract at the same approximate location or utilizing the same resource.

36 C.F.R. § 51.81
May the Director include “special account” provisions in concession contracts?

(a) The Director may not include in concession contracts “special account” provisions, that is, contract provisions which require or authorize a concessioner to undertake with a specified percentage of the concessioner’s gross receipts the
construction of real property improvements, including, without limitation, capital improvements on park lands. The construction of capital improvements will be undertaken only pursuant to the leasehold surrender interest provisions of this part and the applicable concession contract.

(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a repair and maintenance reserve to be used at the direction of the Director solely for maintenance and repair of real property improvements located in park areas and utilized by the concessioner in its operations. Repair and maintenance reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Repair and maintenance reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from the reserves will be expended only for the repair and maintenance of real property improvements assigned to the concessioner by the Director for use in its operations.

(c) A concession contract must require the concessioner to maintain in good condition through a comprehensive repair and maintenance program all of the concessioner’s personal property used in the performance of the concession contract and all real property improvements, including, without limitation, capital improvements, and, government personal property, assigned to the concessioner by a concession contract.

36 C.F.R. § 51.82
Are a concessioner's rates required to be reasonable and subject to approval by the Director?

(a) Concession contracts will permit the concessioner to set reasonable and appropriate rates and charges for visitor services provided to the public, subject to approval by the Director.

(b) Unless otherwise provided in a concession contract, the reasonableness of a concessioner’s rates and charges to the public will be determined primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration of the following factors and other factors deemed relevant by the Director: Length of season; peakloads; average percentage of occupancy; accessibility; availability and costs of labor and materials; and types of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking these factors into consideration.

36 C.F.R. § 51.83
Sale of Native Handicrafts.

(a) Where authorized by an applicable concession contract, concessioners are encouraged to sell authentic native handicrafts appropriately labeled or denoted as authentic that reflect the cultural, historical, and geographic characteristics of the related park area. To further this objective, concession contracts will contain a provision that exempts the revenue of a concessioner derived from the sale of appropriately labeled or denoted authentic native handicrafts from the concession contract’s franchise fee.

(b) The sale of products as authentic native handicrafts is further regulated under the Indian Arts and Crafts Act, Public Law 101–644, as amended.

(c) Definitions.

(1) Alaska Native means any citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metalakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any person so defined either or both of whose adoptive parents are not Alaska Natives. It also includes, in the absence of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Alaska native village or native groups of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaska Native by any village or group.

(2) Arts and crafts objects means art works and crafts that are in a traditional or non-traditional style or medium.

(3) Authentic native handicrafts means arts and crafts objects created by a United States Indian, Alaska Native, Native Samoan or Native Hawaiian that are made with the help of only such devices as allow the manual skill of the maker to
condition the shape and design of each individual object.

(4) Native Hawaiian means any individual who is a descendant of the aboriginal people that, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(5) United States Indian means any individual that is a member of an Indian tribe as defined in 18 U.S.C. 1159(c)(3).

36 C.F.R. § 51.84
What special terms must I know to understand this part?

To understand this subpart specifically and this part in general you must refer to these definitions, applicable in the singular or plural, whenever the terms are used in this part.

A controlling interest in a concession contract means an interest, beneficial or otherwise, that permits the exercise of managerial authority over a concessioner’s performance under the terms of the concession contract and/or decisions regarding the rights and liabilities of the concessioner.

A controlling interest in a concessioner means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities that permits the exercise of managerial authority over the actions and operations of the concessioner. A “controlling interest” in a concessioner also means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities to permit the election of a majority of the Board of Directors of the concessioner. The term “controlling interest” in a concessioner, in the instance of a partnership, limited partnership, joint venture, other business organization or individual entrepreneurship, means ownership or beneficial ownership of the assets of the concessioner that permits the exercise of managerial authority over the actions and operations of the concessioner.

Rights to operate and/or manage under a concession contract means any arrangement where the concessioner employs or contracts with a third party to operate and/or manage the performance of a concession contract (or any portion thereof). This does not apply to arrangements with an individual employee.

Subconcessioner means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

36 C.F.R. § 51.85
What assignments require the approval of the Director?

The concessioner may not assign, sell, convey, grant, contract for, or otherwise transfer (such transactions collectively referred to as “assignments” for purposes of this part), without the prior written approval of the Director, any of the following:

(a) Any concession contract;

(b) Any rights to operate under or manage the performance of a concession contract as a subconcessioner or otherwise;

(c) Any controlling interest in a concessioner or concession contract; or

(d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

36 C.F.R. § 51.86
What encumbrances require the approval of the Director?

The concessioner may not encumber, pledge, mortgage or otherwise provide as a security interest for any purpose (such transactions collectively referred to as “encumbrances” for purposes of this part), without the prior written approval of the Director, any of the following:
(a) Any concession contract;
(b) Any rights to operate under or manage performance under a concession contract as a subconcessioner or otherwise;
(c) Any controlling interest in a concessioner or concession contract; or
(d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

36 C.F.R. § 51.87

Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?

No, approvals of assignments or encumbrances are subject to the following determinations by the Director:

(a) That the purpose of a leasehold surrender interest or possessory interest encumbrance is either to finance the construction of capital improvements under the applicable concession contract in the applicable park area or to finance the purchase of the applicable concession contract. An encumbrance of a leasehold surrender interest or possessory interest may not be made for any other purpose, including, but not limited to, providing collateral for other debt of a concessioner, the parent of a concessioner, or an entity related to a concessioner;

(b) That the encumbrance does not purport to provide the creditor or assignee any rights beyond those provided by the applicable concession contract, including, but not limited to, any rights to conduct business in a park area except in strict accordance with the terms and conditions of the applicable concession contract;

(c) That the encumbrance does not purport to permit a creditor or assignee of a creditor, in the event of default or otherwise, to begin operations under the applicable concession contract or through a designated operator unless and until the Director determines that the proposed operator is a qualified person as defined in this part;

(d) That an assignment or encumbrance does not purport to assign or encumber assets that are not owned by the concessioner, including, without limitation, park area entrance, user day, or similar use allocations made by the Director;

(e) That the assignment is to a qualified person as defined in this part;

(f) That the assignment or encumbrance would not have an adverse impact on the protection, conservation or preservation of park resources;

(g) That the assignment or encumbrance would not have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(h) That the terms of the assignment or encumbrance are not likely, directly or indirectly, to reduce an existing or new concessioner’s opportunity to earn a reasonable profit over the remaining term of the applicable concession contract, to affect adversely the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

36 C.F.R. § 51.88

What happens if an assignment or encumbrance is completed without the approval of the Director?

Assignments or encumbrances completed without the prior written approval of the Director will be considered as null and void and a material breach of the applicable concession contract which may result in termination of the contract for cause. No person will obtain any valid or enforceable rights in a concessioner, in a concession contract, or to operate or manage under a concession contract as a subconcessioner or otherwise, or to leasehold surrender interest or possessory interest, if acquired in violation of the requirements in this subpart.

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What happens if there is a default on an encumbrance approved by the Director?

In the event of default on an encumbrance approved by the Director in accordance with this part, the creditor, or an assignee of the creditor, may succeed to the interests of the concessioner only to the extent provided by the approved encumbrance, this part and the terms and conditions of the applicable concession contract.

How does the concessioner get the Director's approval before making an assignment or encumbrance?

Before completing any assignment or encumbrance which may be considered to be the type of transaction described in this part, including, but not limited to, the assignment or encumbrance of what may be a controlling interest in a concessioner or a concession contract, the concessioner must apply in writing for approval of the transaction by the Director.

What information may the Director require in the application?

An application for the Director’s approval of an assignment or encumbrance will include, to the extent required by the Director in the circumstances of the transaction, the following information in such detail as the Director may specify in order to make the determinations required by this subpart:

(a) All instruments proposed to implement the transaction;

(b) An opinion of counsel to the effect that the proposed transaction is lawful under all applicable federal and state laws;

(c) A narrative description of the proposed transaction;

(d) A statement as to the existence and nature of any litigation relating to the proposed transaction;

(e) A description of the management qualifications, financial background, and financing and operational plans of any proposed transferee;

(f) A detailed description of all financial aspects of the proposed transaction;

(g) Prospective financial statements (proformas);

(h) A schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets; and

(i) Such other information as the Director may require to make the determinations required by this subpart.

What are standard proformas?

Concessioners are encouraged to submit standard prospective financial statements (proformas) pursuant to this part. A “standard proforma” is one that:

(a) Provides projections, including revenues and expenses that are consistent with the concessioner’s past operating history unless the proforma is accompanied by a narrative that describes why differing expectations are achievable and realistic;

(b) Assumes that any loan related to an assignment or encumbrance will be paid in full by the expiration of the concession contract unless the proforma contains a narrative description as to why an extended loan period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract. The narrative description must include, but is not limited to, identification of the loan’s collateral after expiration of the concession contract; and

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(c) Assumes amortization of any intangible assets assigned or encumbered as a result of the transaction over the remaining term of the concession contract unless the proforma contains a narrative description as to why such extended amortization period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract.

36 C.F.R. § 51.93

If the transaction includes more that one concession contract, how must required information be provided?

In circumstances of an assignment or encumbrance that includes more than one concession contract, the concessioner must provide the information described in this subpart on a contract by contract basis.

36 C.F.R. § 51.94

What information will the Director consider when deciding to approve a transaction?

In deciding whether to approve an assignment or encumbrance, the Director will consider the proformas, all other information submitted by the concessioner, and other information available to the Director.

36 C.F.R. § 51.95

Does the Director's approval of an assignment or encumbrance include any representations of any nature?

In approving an assignment or encumbrance, the Director has no duty to inform any person of any information the Director may have relating to the concession contract, the park area, or other matters relevant to the concession contract or the assignment or encumbrance. In addition, in approving an assignment or encumbrance, the Director makes no representations of any nature to any person about any matter, including, but not limited to, the value, allocation, or potential profitability of any concession contract or assets of a concessioner. No approval of an assignment or encumbrance may be construed as altering the terms and conditions of the applicable concession contract unless expressly so stated by the Director in writing.

36 C.F.R. § 51.96

May the Director amend or extend a concession contract for the purpose of facilitating a transaction?

The Director may not amend or extend a concession contract for the purpose of facilitating an assignment or encumbrance. The Director may not make commitments regarding rates to the public, contract extensions, concession contract terms and conditions, or any other matter, for the purpose of facilitating an assignment or encumbrance.

36 C.F.R. § 51.97

May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

The Director may not open to renegotiation or modify the terms and conditions of a concession contract as a condition to the approval of an assignment or encumbrance. The exception is if the Director determines that renegotiation or modification is required to avoid an adverse impact on the protection, conservation or preservation of the resources of a park area or an adverse impact on the provision of necessary and appropriate visitor services at reasonable rates and charges.

36 C.F.R. § 51.98

What records must the concessioner keep and what access does the Director have to records?

A concessioner (and any subconcessioner) must keep any records that the Director may require for the term of the concession contract and for five calendar years after the termination or expiration of the concession contract to enable the Director to determine that all terms of the concession contract are or were faithfully performed. The Director and any duly authorized representative of the Director must, for the purpose of audit and examination, have access to all pertinent records, books, documents, and papers of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the concessioner).
36 C.F.R. § 51.99

What access to concessioner records will the Comptroller General have?

The Comptroller General or any duly authorized representative of the Comptroller General must, until the expiration of five calendar years after the close of the business year of each concessioner (or subconcessioner), have access to and the right to examine all pertinent books, papers, documents and records of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by the parent or affiliate of the concessioner).

36 C.F.R. § 51.100

When will the Director make proposals and evaluation documents publicly available?

In the interest of enhancing competition for concession contracts, the Director will not make publicly available proposals submitted in response to a prospectus or documents generated by the Director in evaluating such proposals, until the date that the new concession contract solicited by the prospectus is awarded. At that time, the Director may or will make the proposals and documents publicly available in accordance with applicable law.

36 C.F.R. § 51.101

Did the 1998 Act repeal the 1965 Act?

Section 415 of the 1998 Act repealed the 1965 Act and related laws as of November 13, 1998. This repeal did not affect the validity of any 1965 Act concession contract. The provisions of this part apply to all 1965 Act concession contracts except to the extent that such provisions are inconsistent with terms and conditions of a 1965 Act concession contract.

36 C.F.R. § 51.102

What is the effect of the 1998 Act’s repeal of the 1965 Act’s preference in renewal?

(a) Section 5 of the 1965 Act required the Secretary to give existing satisfactory concessioners a preference in the renewal (termed a “renewal preference” in the rest of this section) of its concession contract or permit. Section 415 of the 1998 Act repealed this statutory renewal preference as of November 13, 1998. It is the final decision of the Director, subject to the right of appeal set forth in paragraph (b) of this section, that holders of 1965 Act concession contracts are not entitled to be given a renewal preference with respect to such contracts (although they may otherwise qualify for a right of preference regarding such contracts under Sections 403(7) and (8) of the 1998 Act as implemented in this part). However, if a concessioner holds an existing 1965 Act concession contract and the contract makes express reference to a renewal preference, the concessioner may appeal to the Director for recognition of a renewal preference.

(b) Such appeal must be in writing and be received by the Director no later than thirty days after the issuance of a prospectus for a concession contract under this part for which the concessioner asserts a renewal preference. The Director must make a decision on the appeal prior to the proposal submission date specified in the prospectus. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus. The Director may delegate consideration of such appeals only to a Deputy or Associate Director. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal and other available information.

(c) If the appeal results in a determination by the Director that the 1965 Act concession contract in question makes express reference to a renewal preference under section 5 of the 1965 Act, the 1998 Act’s repeal of section 5 of the 1965 Act was inconsistent with the terms and conditions of the concession contract, and that the holder of the concession contract in these circumstances is entitled to a renewal preference by operation of law, the Director will permit the concessioner to exercise a renewal preference for the contract subject to and in accordance with the otherwise applicable right of preference terms and conditions of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus. The Director, similarly, will permit any holder of a 1965 Act concession contract that a court of competent jurisdiction determines in a final order is entitled to a renewal preference, for any reason, to exercise a right of preference in accordance with the otherwise applicable requirements of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus.
36 C.F.R. § 51.103

Severability.

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

36 C.F.R. § 51.104

Has OMB approved the collection of information?

The Office of Management and Budget (OMB) reviewed and approved the information collection requirements contained in this Part and assigned OMB Control No. 1024–0029. We use this information to administer the National Park Service concessions program, including solicitation, award, and administration of concession contracts. A Federal agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Information Collection Clearance Officer, National Park Service, 1849 C Street NW., (2601), Washington, DC 20240.
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1. Introduction

This Concession Management Rate Administration Guide (Rate Guide) provides policies and procedures for concession rate administration by the National Park Service (NPS). The procedures described in the Rate Guide address the NPS requirements under Sec. 406 of Title IV of the National Parks Omnibus Management Act of 1998 as relates to “reasonableness of rates” to the public. The Rate Guide provides details on authorized rate methods and procedures for concessioner rate requests, approvals, and appeals.

This Rate Guide augments and updates the information contained in NPS-48, Chapter 18 and RM-48 Chapter 5, when it supersedes the rate administration information in NPS-48. If procedures in this Rate Guide conflict with NPS-48 or RM-48, the procedures in this Rate Guide take precedence.

This Rate Guide is periodically updated to reflect changes and clarifications in rate administration policies and procedures.

The goal of the NPS Concession Rate Administration Program (Rate Administration Program) is to ensure that rates charged to the public for concessioner-provided facilities and services are fair to concessioners, reasonable for visitors, and set in accordance with law and policy. The procedures described in this guide provide an analytical process to review and approve concessioner rates in a manner that is as prompt and unburdensome as possible and achieve the following objectives:

- Produce defendable and reliable results.
- Rely on market forces and reflect the competitive marketplace.
- Address the unique factors and requirements of concession facilities and services.
- Ensure a consistent Service-wide approach.
- Provide a professional process for parks.

The various responsibilities of entities involved in the Rate Administration Program are outlined in NPS 48/RM 48. The methods and procedures for accomplishing these responsibilities are identified and discussed in more detail in the Rate Guide.

Throughout the Rate Guide, the term “concession specialist” is used to refer to the park employee(s) responsible for managing the concession contracts. This includes full time concession specialists, other concession management positions, and collateral duty employees with concession management responsibilities.
2. Rate Administration Program Procedures

This section defines the administrative procedures for:

- Setting initial rates.
- Changing rate methods.
- Addressing rate requests.
- Conducting rate reviews and approvals.
- Managing rate appeals.

The superintendent is the primary authority for determining rate methods and approved rates for concession products and services, supported by park concession specialists. The region, and in some cases the Washington Support Office (WASO) or third-party hospitality consultants, may also provide assistance as needed.

2.1. Baseline Rates

During prospectus development, NPS personnel (park, region or WASO) or hospitality consultants should use their expertise to conduct a comparability study, including an initial analysis of:

- Types and category (i.e., classification level) of services.
- Applicable rate methods.
- Potential and actual comparables.
- Appropriate rates.

The results from this analysis are incorporated into the concession contract operating plan to establish the applicable rate methods, comparable operations, and approved rate schedules for the first year of the contract (or multiple years of the contract if an indexing method is used). The consultant or NPS personnel will also use this information in the prospectus financial analysis.

2.2. Rate Method Changes during the Term of the Contract

The superintendent may change the rate method used to approve rates during the term of a contract to reflect changes in market conditions, concession operations, or policies. For example, the superintendent may determine that a more streamlined process such as core services rather than full comparability can be employed for a particular service and still ensure fair pricing for visitors. Conversely, the superintendent may determine that a more flexible rate method (such as competitive market declaration) is no longer working to provide fair rates for visitors and as a result, change the rate approval method to one that provides more oversight (such as comparability). The park should consult with their regional office when considering such changes to the rate methods.

The park should conduct an analysis for such changes in rate approval methods, discuss any changes with the concessioner so they understand the reason for the change, and document the changes in the operating plan. Concessioners must have adequate time to implement the rate
administration changes, typically several months before the concessioner’s rate request is due. Exceptions are when rate method changes are necessary on a more expedited timeline to address significant rate fairness issues. In such cases, the park may change the rate methods within the same operating season.

The concessioner may also propose changes in rate methods. Such proposals must include documentation with analysis and justification demonstrating how the new method will improve processes for the park and concessioner while providing fair rates to visitors.

2.3. Rate Changes during the Term of the Contract

The superintendent may approve changes to rates during the term of the contract to reflect changes in the market or concession conditions. The most common trigger for a rate change consideration is a request from the concessioner. There may also be occasions when the park determines there is a need for a rate adjustment. Additionally, some rate methods include a programmed rate change. Processes for each of these are outlined below.

2.3.1. Concessioner-Requested Rate Changes

Rate Request Timeline

The park must establish a timeline for when the concessioner may submit requests for rate changes beginning in the second year of the contract. The timeline should:

- Provide a logical, realistic time frame for completing the necessary research, analysis, document preparation, and reviews.
- Consider the need for concessioners to prepare advertising materials and public rate schedules.

Parks with multiple concession operations should consider staggering rate request timelines to help the park meet appropriate response times.

Written Rate Request

Concessioners must request rate changes in writing and in accordance with the rate request timeline. The requests must include sufficient detail and documentation to justify the requested rate. Documentation may include:

- Information on the concessioner’s proposed rate methods.
- Proposed rates.
- Rate comparables.
- Financial analysis.
- Other information the concessioner believes should be considered in accordance with law.

Out-of-Cycle Rate Increase

Concessioners may make special rate requests outside of the annual timetable for products or services due to special events, unexpected changes, or emergencies.

In certain cases where expedience is necessary, concessioners may make approval requests via telephone. A written request must follow all telephone requests documenting the justification for the rate change.
Park Review and Approval

Concession specialists must review concessioner rate requests to determine if the requests are justified. The specific review procedures will vary depending on the type of rate method used and may include the completion of a rate comparability study, calculation using Consumer Price Index (CPI) data, or other actions. If the concessioner’s request requires additional review or input, regional or WASO Commercial Services personnel can provide technical assistance.

The concession specialist should review the rate request and provide a written recommendation to the superintendent stating whether the rate should be approved (i.e., the concessioner’s rate request is justified) or denied (i.e., the concessioner’s rate request is not justified). The concession specialist may also recommend approval of a modified rate schedule that provides a rate increase lower than the concessioner requested.

Documentation must fully support the recommendation and include a format that outlines the procedures followed in reviewing the concessioner’s rates and in analyzing the supporting documentation and data. For the benefit of the superintendent, the recommendation should also include an executive summary of the results of the review.

It is important that responses to concessioner rate requests are timely. Parks should strive to complete the rate review within 60 days, except in unusual circumstances. Parks should communicate the schedule to the concessioner, and include it into the operating plan. If a park is unable to complete its review because the concessioner provides insufficient information, the park should request additional information from the concessioner and reestablish an appropriate response schedule.

The concession specialist should prepare the approved rate schedule based on the rate request decision and include specific, adequate information to ensure all rate factors are documented and understood. Elements may include:

- Menu items
- Room types
- Seasonal or holiday/special event rates
- Deposit and cancellation policies
- Group/package rates
- Reduced rates for federal employees
- Other factors to show what is provided for the price charged

The superintendent must sign and date the approved rate schedule and provide a written copy to the concessioner, which includes “These rates are to remain in effect until specific changes are approved by the superintendent” at the bottom of each page.
If the superintendent denies or modifies the concessioner’s rate request, the park must inform the concessioner and provide appropriate justification.

**Annual Overall Rating Requirement**

Concessioners should not receive approval for a rate increase if they have an Annual Overall Rating (AOR) score of marginal or unsatisfactory. Such scores represent failure for the concessioner to substantially meet visitor service standards and/or administrative requirements. Exceptions may be granted by the Superintendent if the concessioner demonstrates rates are significantly below market pricing; however, even in these circumstances, approval for the full request to bring them to an industry standard should not be provided until the concessioner’s performance is improved to satisfactory.

2.3.2. *NPS-Initiated Rate Reductions*

The NPS typically relies upon the concessioner to make rate change requests when they feel it is justified and does not routinely initiate rates changes during the term of the contract.

However, the NPS may determine, based upon completion of a rate study or other comparability data, that rates for a service should be lower than the currently approved rate. In circumstances where there is reasonable evidence that rates are likely to recover, the superintendent may deny any rate increases until comparable rates have caught back up. In situations where economic circumstances demonstrate the rates will be lower than those currently approved for an extended period, the superintendent may approve a rate reduction to ensure compliance with comparability requirements under the law and fairness to the visitor. The concessions specialist must consult with the regional office before reducing rates so they can provide guidance and be prepared for any potential appeals from the concessioner.

2.3.3. *Programmed Rate Changes*

Rate methods for some services establish an annual rate adjustment based upon an index such as the Consumer Price Index (CPI). If such indices indicate a rate increase, the increase is not automatic. The concessioner must still formally request a rate change and provide index data demonstrating the justification for the rate adjustment. If the index indicates a rate reduction, the park should hold or reduce rates as outlined above.

2.4. *Advance Rates*

Parks typically approve rates before the start of the peak visitor season. However, concessioners can accept reservations up to two years in advance. To account for potential rate increases beyond the current year’s approved rate schedule, the concessioner may request an “advance rate” approval.

**Advance Rate Request**

Concessioners must request written permission to charge advance rates. The concessioner is responsible for providing adequate documentation to justify the rates they are proposing. In accordance with statutory requirements, this supporting documentation must be based on comparability. Documentation may include data from comparables which documents their advertised or projected rates for the advance period or rate trend data for the comparable property. Concessioners may use industry indices or trend reports to justify advance rate requests. Such indices and reports for the lodging industry include CPI, Smith Travel Research, and PKF/CBRE reports.
The superintendent must approve all advance rates before they are advertised or charged. If a concessioner provides unjustified data, or if the park demonstrates the rate request is not justified, the superintendent may approve a lower advance rate. The superintendent should deny an advance rate increase if research and analysis indicate market conditions will deteriorate and the advance rate may fall below the current year’s rate.

**Managing Advance Rates**

If the final approved rate for the season is lower than the advance rate, the concessioner must refund the difference between the advance rate deposit and the actual rate deposit to the park visitor. If the final approved rates are higher than the advance rate, the concessioner must honor the advance rate for the entire length of stay.

The concessioner must develop procedures to manage the advance rate process and provide them to the park for approval. Concessioners must provide accounting and tracking documentation to the park upon request, and clearly disclose their refund policy regarding advance rates to customers at the time of reservation and at the time of stay.

Concession specialists must periodically review the concessioner’s advance rate processes to ensure the concessioner is conducting customer disclosures, charging correct rates, and issuing any applicable refunds.

### 2.5. Rate Request Appeals

If a concessioner disagrees with the findings of a rate review, there is a right to appeal. The superintendent should make reasonable efforts to work out the disagreement with the concessioner, before processing the appeal. Appeal reviews must occur in a timely manner.

**Steps for Appealing a Rate Request:**

1. The concessioner writes a letter of appeal to the superintendent stating the concessioner's desire to appeal to the regional director. The letter must clearly state the concessioner’s objection to the rate study determination and include sufficient data to support the objection.
2. The superintendent forwards the letter of appeal to the regional director in a timely manner.
3. The park provides comments relating to the concessioner’s objections and supporting information to justify the park’s position relating to each issue of the appeal.
4. The current rates for the services in question remain in effect until the regional director renders a decision, which is final.
5. The regional director returns their decision to the concessioner in writing, through the superintendent.

If the regional director overturns the superintendent’s decision, the memorandum becomes an amendment to the park’s approved rates.

### 2.6. Rate Administration Compliance

Park personnel are responsible for approving concessioner advertising containing rate information, performing rate checks several times per year, and ensuring the concessioner’s quality and standard of services align with their rates. These procedures are part of the the NPS Concessioner Review Program which is outlined in NPS 48/RM 48.
2.7. Qualifications to Perform Rate Approvals and Co-Signers

Personnel who conduct rate reviews and oversee rate compliance are required to hold NPS Commercial Services Evaluation and Pricing (E&P) Training certification. E&P recertification is recommended every five years.

A cosigner is necessary if the concession employee (collateral duty or full time) conducting rate reviews has not completed E&P training. Personnel certified through E&P training do not need a cosigner but may still request one. The regional office can assist the park in identifying a possible cosigner.

The cosigner provides support and advice to the park reviewer to ensure the rate analysis is valid and supports recommendations. To qualify as a cosigner, the employee must have at least three years of experience conducting rate studies following successful completion of E&P training. Cosigners must be full-time concession management personnel and be familiar with the park and concession operation in question. Cosigners may be personnel from other parks, regional offices, or WASO. Studies are considered invalid when conducted by anyone without the proper training and experience.
3. Rate Administration Methods

3.1. Rate Method Summaries

This section includes summaries of the various approved rate methods. Detailed procedures for each method follow in Sections 3.3 – 3.9.

Competitive Market Declaration

Competitive Market Declaration (CMD) is the rate approval method with the least administrative burden for the park and concessioner. This method utilizes a written statement to document that the concessioner is in a competitive market for a specific service and allows the concessioner to price accordingly. This method assumes there is significant external competition so the concessioner sets their rates based on market pressure and pricing of a specific item or service is not influenced or enhanced by a specific NPS area. These conditions are most commonly seen in urban areas and parks with nearby gateway communities.

CMD is the preferred rate method for merchandise items that do not have a manufacturer’s suggested retail price (MSRP). CMD may be used for other products or services where there is a competitive market. When applying this method, particular care must be taken where the service is more critical to visitors, such as lodging or food and beverage.

Comparability

Comparability is the fundamental rate setting method. It is also the method with the highest level of effort to establish and oversee rates. NPS personnel use this method to compare concession facilities or services to similar offerings outside the park, and apply it when other simplified methods are inappropriate or inadequate. This method is most often used for:

- Lodging
- Campgrounds
- Marinas
- Tour operations
- Fuel
- Guides and outfitters

The comparability method consists of two levels - full review and limited review. The full review requires the NPS to collect information by visiting nearby businesses that are similar and potentially comparable to the concession operation. NPS personnel analyze the information and select the properties determined to be most similar as actual comparables in the assessment of the concessioner’s rate request. The limited review process is similar to the full review process, except the data is collected remotely via telephone, internet, or correspondence.

Manufacturer’s Suggested Retail Price

MSRP is the preferred method for merchandise and convenience items that have pre-printed prices on them. MSRP is the pre-printed price the manufacturer recommends the retailer uses to sell the product. Products that have an MSRP should be priced at that rate. All other items without an MSRP may be priced using CMD or markup, as appropriate.
Markup

The markup rate method is the preferred method for pricing *convenience items* that do not have an MSRP. Conveniences items are products that are generally consumed regularly and viewed as *necessities*. Examples include:

- Ice.
- Packaged food.
- Personal care products.

This rate method uses industry gross margins by product category obtained through data from by the National Association of Convenience Stores (NACS) that is distributed by the NPS Commercial Services Program annually. Markup percent is the percent of total cost that is profit. The application of this method involves pricing items using the concessioner’s documented product cost multiplied by the applicable percentage.

Core Methods (Core Menu, Core Rooms, Core Retail, Core Services)

The core methods allow parks to simplify the rate administration process by using different rate methods for products or services that have core and non-core offerings. The park decides which products or services are “core” to the operation and prices those using the comparability process, while the concessioner prices the non-core products based on what the market will bear.

The core method is the preferred method for lodging, food and beverage, and convenience items, and may be applicable to other services where there are differentiated offerings.

Financial Analysis

This method provides a process for calculating rates at the beginning of a contract using a financial analysis and annually adjusting them by an index. It is intended for use when:

- Comparables are not available.
- No other rate method can be used.
- There is a need to account for unique aspects of the business that other rate methods cannot address.

The method may be useful for unusual services such as seaplane rides, mountaineering services, bathhouses, ferry services, or river running operations.

Indexing

Rates may be approved by using CPI or other indexes. Indexing is not a stand-alone rate method; rather it is used to update rates set by other methods (comparability, financial analysis).

Other Methods

The NPS continues to investigate ways to reduce the rate approval burden to parks and concessioners while still meeting the requirements of the laws and objectives of the Rate Administration Program. The park and the concessioner, in consultation with the

**“AMENITY ADJUSTMENT” PILOT**

Some parks have been piloting a new method for setting rates for lodging that uses comparability to set the rate for a “standard” room type and then adjusting rates up or down for other room types based on what amenities are provided (balcony, view, fireplace, etc.). These amenity adjustments can be based on the concessioner’s historical rate differences or the comparables’ rate differences in room types.

Interested in piloting this method? Contact your regional office.
regional office and WASO Commercial Services, may choose to pilot methods that meet these requirements. WASO Commercial Services may be available to provide technical assistance in such pilot efforts.

### 3.2. Preferred Rate Methods by Service Type

The table below identifies the preferred and alternate rate methods by service type.

<table>
<thead>
<tr>
<th>SERVICE TYPE</th>
<th>APPROVED RATE METHOD(S)</th>
<th>Alternative</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Preferred</td>
<td>Alternative</td>
</tr>
<tr>
<td>Lodging</td>
<td>Core (Room)</td>
<td>Direct Comparability</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Financial Analysis</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Competitive Market Declaration</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
<td>Core (Menu)</td>
<td>Direct Comparability</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cost of Goods</td>
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<tr>
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<td></td>
<td>Competitive Market Declaration</td>
</tr>
<tr>
<td>Retail- Convenience</td>
<td>MSRP/Core Markup</td>
<td>MSRP/Full Comparability</td>
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<tr>
<td></td>
<td></td>
<td>Competitive Market Declaration</td>
</tr>
<tr>
<td>Retail- Merchandise</td>
<td>MSRP/Competitive Market Declaration</td>
<td>Direct Comparability</td>
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<tr>
<td>Fuel</td>
<td>Direct Comparability</td>
<td>Fuel Markup</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Competitive Market Declaration</td>
</tr>
<tr>
<td>Other Services</td>
<td>Core (Services)</td>
<td>Direct Comparability</td>
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<tr>
<td></td>
<td></td>
<td>Financial Analysis</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Competitive Market Declaration</td>
</tr>
</tbody>
</table>

### 3.3. Competitive Market Declaration

The Competitive Market Declaration (CMD) rate method should be used for all *merchandise items* without MSRP. Merchandise items are manufactured or handcrafted items that are not considered necessities, such as coffee mugs, key chains and toys. Given the non-essential nature of merchandise and the availability of similar products in areas outside the park and online, merchandise in all parks can be priced using CMD without having to provide the written documentation and justification below.

CMD may be used for other services **only** if one of the following situations applies:

1. **Competitive Market** - A competitive market requires the concessioner to compete with other businesses, which ensures market pricing. For example, a concession restaurant in a park may compete directly with other nearby restaurants and have little or no competitive advantage due to location. Similarly, a retail store may find it competes with other shops locally, regionally, or even nationally (i.e. internet) for similar goods and must set prices consistent with these businesses.

2. **No Competitive Advantage** - The sale of art may derive little or no competitive advantage from being in a park, since individuals often travel substantial distances to obtain these items and the place of purchase is less important than the character of the item. On the other hand, a marina that provides the only access to a body of water enjoys a substantial competitive advantage and should not use CMD.

3. **Prices Routinely Negotiated** - The price of consignment items, antiques, boats, and many other products is often negotiated between the buyer and seller.
3.3.1. CMD Documentation

The park must document the decision to use CMD for anything other than merchandise, and include the declaration in the approved rate schedule. The format of the declaration may be adjusted to meet individual needs. However, it should include at a minimum, a statement to the effect that:

1. The concessioner operates in a competitive market and derives no advantage from being in the park.
2. Competitive market forces are the determining factor of the concessioner’s rates.
3. The concessioner may adjust rates without the specific approval of the superintendent, but rates are subject to review to ensure they remain reasonable in comparison to similar services offered outside the park.
4. An annual review of the declaration is necessary and the park may rescind the use of this if the situation changes.

Competitive Market Declaration Examples

Example One: Guided Hiking

The Zion Lodge offers guided hikes inside the park. There are ten Commercial Use Authorization (CUA) companies that also offer similar guided hikes inside the park, as well as numerous guided hiking opportunities just outside of the park.

The use of CMD for guided hikes is appropriate. The concessioner can adjust rates without the specific administration of the superintendent, but they are subject to review to ensure they remain comparable to similar services offered outside Zion National Park. The decision to change rate administration methods lies with the superintendent, who reviews the declaration annually to determine if rescinding the use of this method is warranted.

Sample CMD Statement:

| Guided Hikes - Competitive Market Declaration. Guided hikes offered by the Zion Lodge are offered in a competitive market. Zion Lodge competes with CUAs and other businesses nearby in Springdale, which ensures market pricing. In consideration of these factors, I declared that rates charged by the concessioner for guided hikes are comparable and approved. Zion Lodge may competitively price guided hikes without further approval from the NPS. Rates are subject to review to ensure they remain comparable to similar services offered outside the park. This declaration will be reviewed annually and the use of this method may be rescinded if the situation changes. |
|---|---|
| Superintendent | Date |

Example Two: Specific Convenience Item

Zion Gifts prices convenience items according to the markup rate method. However, the price of batteries set using the markup method is much lower than the prices at the competitors’ shops. Since this price is out of sync with the local market, the concessioner has requested a markup waiver for this item and the superintendent has approved the use of CMD for batteries.

Sample CMD Statement:
Batteries - Competitive Market Declaration. The price of batteries sold at Zion Gifts in Zion National Park is out of sync with the local market when priced using the markup method. Zion Gifts must be able to compete with other businesses and market pricing. In consideration of these factors, Zion Gifts may price batteries competitively without further approval from the NPS. Rates are subject to review to ensure they remain comparable to similar services offered outside the park. This declaration will be reviewed annually and the use of this method may be rescinded if the situation changes.

Superintendent Date

3.3.2. Monitoring Value for Competitive Market Declaration Services

While CMD streamlines the rate approval process, it is still important for the park to monitor the value of the products and services the concessioner provides. Even in a competitive market, the park location may provide concessioners a unique advantage and ability to charge rates higher than their competitors. The concessioner might increase the quality of their offerings so the service is of a higher standard than was intended by the park, and therefore justify a higher market-based rate. To ensure appropriate value, parks should periodically check the quality of services a concessioner offers against market rate comparables and the NPS standards for the category of service specified in the contract. As indicated above, if there are concerns, it is appropriate to discontinue the CMD method for merchandise or other services. These potential concerns apply not only to the CMD rate method, but also to other rate methods that allow for market pricing, such as the core methods.

3.4. Comparability Method

3.4.1. Comparability Description and Steps

The comparability method is primarily used for lodging, campgrounds, marinas, tour operations, fuel, and guides and outfitters. The purpose of the comparability method is to correlate the concessioner’s rates to similar operations in the competitive marketplace. Establishment of the concessioners’ approved rates under this method involves:

- Identifying comparable businesses that are similar to the concessioner’s operation.
- Analyzing the concessioners’ rates against the rates of the comparable businesses, taking into consideration operating differences.

The full review process requires an onsite visit to collect data. Typically the full review is used for more complex operations such as lodging, large marinas, and other operations where a thorough inspection of operating conditions is important to evaluate comparability.

The limited review process permits the collection of the same data by telephone, internet, or other correspondence, and is typically used for smaller, less complex operations such as fuel, firewood, laundry, showers, and small boat rentals, or when updating a full review.

Parks should complete a comparability review (full or limited) every fifth year of the contract at a minimum. If no significant changes have occurred in either the operating conditions of the comparables or the concessioner, a limited review may be appropriate. Under certain circumstances, however, it may be necessary to conduct a full review prior to the fifth year. For example, a full review must be completed:

- Prior to the start of a new contract.
When an assignment or encumbrance transaction occurs.
• When major renovations have been completed.
• Upon a change in service levels or facility classification.
• Upon any substantive changes to comparable properties.

During the interim years, a limited review or indexing may be used to adjust the rate. Indexing is preferred because it reduces the administrative burden on the park and concessioner.

Concession specialists must follow the following steps when conducting a full review. When conducting a limited review as a stand-alone process, steps 3 and 4 are unnecessary. These processes provide a straightforward, reliable and defensible comparability methodology. Several tools have been developed to aid in some of these processes. Parks may request to help pilot such tools through their regional concession office.

1. **Determine Study Level** - Is it a full or a limited review?

2. **Develop a List of Potential Comparables** - If it is a new review, the concession specialist and the concessioner should work together to develop a list of potential comparables. Involving the concessioner at this stage can eliminate potential conflict later. Comparables should be in an area that is free and unencumbered by permits and restrictions. Ownership of the comparable should be different from that of the concession operation. In some situations, it is necessary to use comparables that are hundreds of miles away because they are so rare. However, if a proposed property is a substantial distance (i.e., several hundred miles) from the park and there are sufficient comparables closer, the property should not be used.

3. **Contact Potential Comparables** - As a courtesy, the concession specialist should contact potential comparable businesses via email or phone, explaining the reason for contact and method used to review concessioner rate requests. The concession specialist should request permission to visit the property and collect basic information and may suggest a date and time for the visit. Few operators decline to assist when approached in this manner.

4. **Visit Potential Comparables** - Visits must be conducted in a professional manner with necessary aids to ensure accurate data collection. The concession specialist may invite concessioners to accompany them on these visits. Preparing a form in advance makes information collection easier. This form may include a space for information on each of the criteria and notes about Extra Quality Features (discussed later in step 7). It is important to document the visit with thorough notes and photographs to record exterior and interior conditions.

5. **Compile and Analyze Data Collected (Comparability Matrix)** – The concession specialist must compile and analyze all collected information in a comparability matrix (sample provided on the following page). When executed properly, this results in the best possible selection of actual comparables. The comparability matrix uses the comparability criteria identified in Section 3.4.2 to provide an objective approach for determining which properties are selected as actual comparables. When completed, this matrix notes the degree of similarity between the concessioner and the potential comparables. The matrix does not designate the properties as better or worse, but only shows the degree of similarity.

When completing the comparability matrix, it is critical for the same person(s) to evaluate all the properties in the matrix for consistency. Concessioners do not participate in the matrix process. The concessioner is listed first on the matrix and is automatically assigned a value of 10 points for each criterion. In a lodging matrix, there are seven criteria, so this format results in a total of 70 points for the concessioner (10 x 7 = 70). In other matrices, the total score may be different (based on the number of criteria in each matrix), but the concessioner always receives the full
points value for that matrix since they provide the base on which all the potential comparables are compared.

For each of the criteria analyzed, the concessions specialist should devise a point spread that reflects the differences between potential comparables. For example, if a concessioner has 100 guest rooms, a potential comparable should have 50-150 guest rooms to receive 10 points. In cases where the comparable is not similar to the concessioner, it may result in a score of either five (partially the same) or zero (completely different). To further distinguish between comparables, it is also appropriate to use numbers between 1-4 and 6-9.

**Sample Matrix**

<table>
<thead>
<tr>
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<th>Comp 1</th>
<th>Comp 2</th>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Similar Clientele</td>
<td>vacationers (10)</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>mix (5)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>business (1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occupancy</td>
<td>&gt; 80% (10)</td>
<td>10</td>
<td>10</td>
<td></td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>50%- 79% (5)</td>
<td></td>
<td></td>
<td>5</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt;49% (1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Facility Characteristics</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building Type</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>cabins/duplexes (4)</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>low rise hotel/motel (3)</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>high-rise (2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facility Age</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1949 or older (1)</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1950-1970 (2)</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>1971-2000 (3)</td>
<td>3</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>2001 or newer (2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Construction Type</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>wood (3)</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>masonry (2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>other (1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Similar Size (# of rooms)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>24 or less (5)</td>
<td>5</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>25-50 (10)</td>
<td>10</td>
<td></td>
<td>10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>50-100 (5)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>101-200 (1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Comparability Score</td>
<td></td>
<td>70</td>
<td>60</td>
<td>48</td>
<td>63</td>
<td>69</td>
<td>60</td>
</tr>
</tbody>
</table>
6. **Select the Actual Comparables** – The concession specialist must select actual comparables after the analysis. In general, there should be at least three actual comparables. Throughout this document whenever the term comparables is used, it refers to actual comparables. When referring to potential comparables, the whole term is used. After the concession specialist completes the matrix and the points are totaled for each property, he or she should look for a natural break in the point spread and selects all properties above that number as actual comparables. In the previous sample, a natural break point seems to be at 60 points, so the park would select Comps 1, 3, 4, and 5 as actual comparables. If a break level is not apparent or provides too few or too many properties, the concession specialist should select an appropriate number of properties from the list.

7. **Conduct an In-Depth Analysis of Comparables** - This step focuses entirely on the comparables selected. The concession specialist must review the information, including other factors deemed significant and Extra Quality Features (EQFs), as part of determining where the concessioner falls among the range of the comparables. EQFs are additional attributes and amenities that add value to the operation, such as televisions, internet, pools, and on-site restaurants for a lodging operation.

Sample lists of EQFs for various service types are available on the [SharePoint Contract Management Toolbox](#). This step helps the concession specialist determine where the concessioner’s operations lie in relation to the range of quality and types of services or facilities the comparables offer. To make this determination, the analysis must compare and appraise the level of EQFs in both concessioner and comparable facilities. These features generally add operating costs and value to the customer. The review may be a simple comparison of the concessioner’s EQFs against the corresponding lists of the individual comparables, taking into consideration that all EQFs are not valued equally.

The concession specialist should prepare a narrative that summarizes the comparables’ EQFs and other criteria for each specific type of facility or service. The narrative should enhance the reader’s knowledge of the property and add value to the matrix comparison.

8. **Collect and Analyze Rate Information** The concession specialist must collect rate information for each comparable. When comparables offer various rates for the same offering (i.e., lodging room rates), the park should use the peak rate for comparison. The peak rate is considered the highest rate the operation charges for the season, not including special events, holidays, discounts, or other restrictions.

In lodging, this may be considered the “rack rate.” If a comparable is unwilling or unable to provide its peak rate, “rate shopping” is necessary. This requires searching the comparables via an online reservation system (or calling the reservation desk) to determine the peak rate. It may be necessary to search a variety of days (weekdays and weekends) and seasons to determine an accurate peak rate.

After EQF comparisons, the concession specialist can make a logical determination of where the concessioner fits in among the comparables in respect to service, condition of facilities, and attention to detail. **It is important not to average rates to find the approved rate.** Rather, the approved rate should fall within the range of property rates to which the concessioner is most comparable.

---

**APPENDIX**

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For example, the comparables from the previous example charge the following peak rates:

- Comp 1 $145.00
- Comp 3 $175.00
- Comp 4 $160.00
- Comp 5 $167.00

If the EQF analysis shows the concessioner belongs between Comp 3 and 5, the approved rate should fall between $167 and $175 (not the average rate of the four comps, or $161.75). If the concessioner’s rate request is $170, the park should approve the rate. If the concessioner’s rate request is $180, the park should approve a maximum rate of $175.

Depending on the operating conditions of the concession operation and its comparables, rate approvals for various seasons or special events (i.e., festivals, holidays, natural phenomenon) may be appropriate. For example, a park with obvious visitation patterns may wish to set peak season, shoulder season, off season rates, and special event rates if comparable operations have similar rate trends.

The park and concessioner should work together to identify any additional rate seasons that exist in the market and the dates that the additional rates will be used for. When using this type of rate stratification, it is important that the park and concessioner consider all rate seasons (off season, shoulder season, etc.) and not just those that will result in higher rates. In considering the number of different rates to approve, the park must balance the legal requirements of ensuring comparable rates with the available resources to review and approve rates in a complete and timely manner.

### 3.4.2. Comparability Criteria

Concession specialists should use the following criteria to determine comparability. Criteria are weighted equally when completing the matrix and each criterion is worth 10 points. For example, lodging has seven applicable criteria for a total of 70 points.

<table>
<thead>
<tr>
<th>Concession Type</th>
<th>Criteria Number</th>
<th>Total Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lodging</td>
<td>1-2-3-4-5-6-7</td>
<td>70</td>
</tr>
<tr>
<td>Food and beverage</td>
<td>1-2-3-7-8</td>
<td>60</td>
</tr>
<tr>
<td>Campgrounds</td>
<td>1-2-3-5-7-9</td>
<td>60</td>
</tr>
<tr>
<td>Marinas</td>
<td>1-2-3-7-10-11</td>
<td>60</td>
</tr>
<tr>
<td>Tours</td>
<td>1-2-3-12-13</td>
<td>50</td>
</tr>
<tr>
<td>Gasoline stations</td>
<td>1-2-3</td>
<td>30</td>
</tr>
<tr>
<td>Other Services</td>
<td>1-2-3-12</td>
<td>40</td>
</tr>
</tbody>
</table>

Comparable operations should be as similar to concessioner operations as possible. Parks examine the degree of similarity between potential concession operations and the concessioner for each criterion, and apply a score based on their findings. The specific criteria are:

1. **Competition (all services)**. Comparable operations must have at least one competitor engaged in a similar operation (service, classification) in the immediate area. Two or more comparable operations are ideal. This ensures greater accuracy and fairness in pricing.
administration. The only possible point score for this criterion is 10. If there is competition, the park awards a score of 10. If there is no competition, the comparable may not be used.

2. **Seasonality (all services)**. Comparable operations should have similar operating seasons in relation to the concessioner. Typically, this is scoring year-round vs. seasonal operations.

3. **Similar Area (all services)**. Comparable operation should be located in an area similar to the concessioner. Possible locations include remote, urban, suburban, mountain, beach, etc.

4. **Similar Clientele (lodging)**. Comparable operations should serve a similar clientele to the concessioner. The concessioner serves the vacationing public almost exclusively. Comparables that serve a significant percentage of corporate or convention business operate differently and may have different costs and revenues than more tourist-oriented facilities.

5. **Occupancy Rate (lodging, campgrounds)**. Comparable operation occupancy rates should be similar to the concessioner’s occupancy rate.

6. **Facility Characteristics (lodging)**. Comparable operations should share certain characteristics with the concessioner, including age, construction material, and building type. Building types can include high-rise (three stories or higher), low-rise (two story), single-story, cabins, etc. These factors are important when comparing facilities to measure the similarities in construction and maintenance costs between facilities. For this criterion, the park divides the ten points into the three facility characteristics factors. For example, the park may choose to make age worth four points, and construction material and building type each worth three points.

7. **Similar Size (lodging, food and beverage, campgrounds, marinas)**. A comparable should be similar in size to the concessioner (similar number of lodging rooms, restaurant seats, campground sites, marina slips, etc).

8. **Similar Classification and Number of Meals (food and beverage)**. Comparable operations should have a similar classification and serve a similar number of meals as the concessioner operation. Examples of classification include fast casual, family casual, and fine dining. Examples of number of meals include breakfast, lunch, and dinner.

9. **Site Type (campgrounds)**. Comparable operations should offer similar site types to the concessioner operation. This includes campgrounds that may provide areas to accommodate RV users or tent campers, or a combination of the two.

10. **Similarity of Operations (marinas)**. Comparable operations offer similar amenities to concessioner operations. This includes criteria such as length of boats, types of boats and utilities.

11. **Construction Characteristics (marinas)**. Comparable operations are constructed of similar materials to concessioner operations. This can include the construction type and materials of the dock (floating, pilings, metal, or wood), weather protection, and breakwater.

12. **Similarity of Operations (tour operations, other services)**. Comparable operations should offer similar services as the concession operation. This may include using similar types of equipment, offering similar services, or having similar facilities. For example, concessioner and potential comparables for a tour operation should use a similar type of equipment (car/van, bus, tram, boat) and preferably the same type of power and fuel. These affect the initial investment and ongoing operating costs for various kinds of equipment. Additionally, the concessioner and the potential comparable should provide the same type of guide service, whether live narrative or tape recording.

13. **Tour Length (tour operations)**. Comparable operations should offer similar tour lengths to concession operation. For example, two-hour, half day, or full day tours. It is not advisable to compare extended tours with tours of a short duration because fixed costs will vary.
14. **Locally Important Criteria (optional).** Due to the wide variety of services and activities unique to parks, the concession specialist may identify certain local criteria for comparability. The criteria should specifically identify the desired levels of service or equipment.

### 3.4.3. Unique Comparables

#### Other Government Agency-Managed Properties

While it is not prohibited to use other government agency-managed commercial operations as comparables, it is not preferred because of the potential for these facilities to operate under conditions that prevent them from operating competitively. Concession specialists may use other government agency-managed properties when they cannot find an adequate number of acceptable non-government managed businesses.

The government-managed property must establish their rates competitively (i.e., rates are not set or financially regulated by a governing agency) and the contract or other operating requirements imposed by the federal agency must not prevent the business from acting like an unencumbered commercial operation. The concession specialist must investigate and document these items.

#### Operations from Other Countries

Using commercial operations from other countries as comparables is allowed, but should only be used when an adequate number of domestic comparables are not available for comparison. While foreign facilities may provide similar services in similar environments (and therefore seem like a reasonable comparable), certain factors can make them unsuitable. These factors may include different operating and regulatory environments, financial exchange rates, and local economies. Non-domestic locations where these factors are not significant and provide reasonable comparables include U.S. Territories, Canada, and the Bahamas.

In all cases, when using non-domestic comparables, concession specialists must take the foreign exchange rate into account in the rate determination.

#### Operations Located on Park Inholdings

It is acceptable to use commercial operations on NPS inholdings as a comparable. Concession specialists must ensure the operation meets the comparability criteria, including whether the property’s rates were established competitively and whether its presence within a park inholding imposes operating requirements that prevent the business from acting like an unencumbered commercial operation.

#### Chain Establishments

It is not preferable to use chain hotels (Best Western, Hilton, etc.) or restaurants (Applebee’s, Chipotle, etc.) as a comparable, particularly if an adequate number of independent operations are available. The operating costs for chain establishments are often lower than a concessioner’s operating costs, making them unsuitable candidates for comparison. If chain properties must be used because other comparables are not available, they should not comprise more than half of the comparables.

Concession specialists should consult their regional office for guidance if they are unsure about the use of a particular property. In the event that such comparables are used, the concession specialist must maintain documentation demonstrating the need for using these comparables.

### 3.5. Manufacturer’s Suggested Retail Price (MSRP)
Manufacturer’s Suggested Retail Price (MSRP) is the preferred rate method for merchandise and convenience items if the MSRP is pre-printed and clearly indicated on the product and the use of such pricing is standard industry practice. Items that are typically sold at a factory printed price include magazines, books, newspapers, candy bars and snack foods.

Additionally, merchandise items such as clothing procured by a supplier with a pre-printed tag may also be priced using the MSRP. If requested, the concessioner must be able to demonstrate the items are commonly sold at MSRP.

As with the other rate methods, MSRP is the maximum rate approved, and concessioners may choose to charge a lower price. Concessioners may use markup or CMD when MSRP is:

- Not provided on the product.
- Not commonly used for pricing in the industry.
- Otherwise determined to be inappropriate.

For example, for backcountry operations where there are significant transportation costs to provide items to the backcountry operation, the MSRP method may not be appropriate. Instead, to account for and include freight costs in the final price, it may be appropriate to use the markup method instead.

### 3.6. Markup Method for Convenience Items

The markup rate method is used for convenience items that do not have a MSRP. Convenience items are products that are consumed regularly and viewed as visitor necessities such as ice, food, and personal care products. Approved prices for these specific types of retail merchandise are established by applying approved markup percentages to product cost. The use of this source ensures comparability with the private sector, while providing a less rigorous process for both the concessioner and the park.

#### 3.6.1. Determining Price

Markup percentages are broken down into categories. The markup percentage list is distributed annually by the NPS Commercial Services Program and posted in the policy library on SharePoint, normally before the start of the calendar year. Rate reviews should use only the most current markup percentages. Concession specialists are responsible for giving concessioners the updated percentages in a timely manner so they can implement the new rates.

Concessioners may sell some merchandise that is not listed or might fit into more than one category. Concessioners that operate in more than one park sometimes use different categories for the same merchandise to determine rates. It is important to identify those discrepancies so the percentages can be applied consistently.

Use the following formula when using the markup method to determine the maximum selling price:

\[
\text{Total Cost} \times (1 + \text{markup percentage}) = \text{selling price}
\]
For example, if the concessioners’ cost for cough medicine is $4.50, the park refers to the Markup table, identifies that the markup percentage for health and beauty care is 71%, and uses these numbers to identify the selling price:

\[ \$4.50 \times (1 + 0.71) = \$7.70 \]

Rounding is acceptable and common. In this case, the concessioner may propose to sell the cough medicine for $7.75.

<table>
<thead>
<tr>
<th>Retail Price</th>
<th>Round to Nearest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below $10.00</td>
<td>$0.25</td>
</tr>
<tr>
<td>$10 to $49.99</td>
<td>$0.50</td>
</tr>
<tr>
<td>$50 and Over</td>
<td>$1.00</td>
</tr>
</tbody>
</table>

Note: The common store pricing strategy of lowering prices so they end in a price of perceived better value (e.g., $.99 or $.49 rather $.00 or $.50, respectively) is permitted as long as prices are lower rather than the approved amount.

For the $7.70 example above, that rate is rounded to $7.75 and therefore not eligible for the .49 or .99 rounding. But if the maximum approved rate is $7.89 and the concessioner rounds to $8.00, they can also charge $7.99.

If the concessioner chooses to round, rounding must be applied consistently across all products, both up and down. The concessioner may not choose to only round on products where rounding is upward and yields a higher price. These rounding practices may also be applied to services other than retail.

### 3.6.2. Product Costs and Freight Charges

To avoid selling the same product at different prices, merchandise on hand at the time the wholesaler announces a price change may be revalued to reflect new wholesale costs, and retail prices can be adjusted accordingly. Invoices showing price increases on these items can be used for documentation.

Documented freight costs may be added to the product cost prior to applying the markup percentages. The concessioner must produce documentation for these expenses. The concessioner may accurately identify average annual freight costs or, with NPS approval, propose a fixed freight cost to be added as a percentage of the wholesale cost. This method allows a concessioner to keep the same prices on hundreds of items throughout the year as restocking shipments come in with slightly different freight costs.

The major burden is on the concessioner, who must keep accurate records for calculation of an average freight cost. The freight cost should be stated as a percentage of merchandise sold for the previous year. The concessioner must document exactly what the percentage for freight was for the past year. If the park agrees to permit averaging and the concessioner’s documentation is adequate, the percentage can be added to all merchandise sold in the following year. This procedure is a variation on the standard process that requires the concessioner to calculate the freight rate for each individual item based on the identified costs on the separate invoices.

The concessioner is required to track the actual freight costs for the year to determine if recovery of costs is above or below the actual cost. The concessioner takes this difference into account the next year by either raising or lowering the percentage to account for the difference. For example, if the concessioner estimated 2% in freight costs for the year, but the actual cost was only 1.5%, the
concessioner must deduct 0.5% from the next year’s estimated freight costs. This is an annual adjustment.

If the park decides to allow this time-saving process, they must ignore the invoice freight charges in calculating approved retail sales prices. The final rate for all merchandise will have the same percentage of freight charges (for example, 1.5%). Some of the actual freight rates will be higher and some lower than the overall average. For example, if the wholesale cost of an item to the concessioner is $10.00, 1.5%, or $0.15 may be added before the item is marked up to the final retail price. If the mark up is 100%, the final retail price of the example item would be $20.30. This does not include rounding, utility add on charges, or other appropriate costs. This process, when supported by accurate records, results in more stable pricing and a simpler administrative process.

Warehouse charges may not be added to the product cost. These charges include normal labor and other expenses incurred by the concessioner in handling merchandise in storage and sales outlets. Freight charges may also not be added to product costs for delivering merchandise from the concessioner’s warehouse to the point of sale.

Concessioners may take advantage of volume discounts offered by suppliers. In this case, the markup should be placed on top of the wholesale cost, not the discounted cost, listed on the invoice. The concessioner must provide documentation of the volume discount when requested.

### 3.6.3. Variations from Listed Percentages

The percentages on the markup percentage list should be used as a maximum allowable percentage. However, if a local market price for a convenience item appears out of sync with the markup percentage list, the concessioner may request a markup waiver for a particular item and that comparability or CMD be used to set the item price. The concessioner must justify the decision to use the alternative method with appropriate documentation. The park superintendent must approve the use of these alternative rate methods in advance.

Parks are advised to discourage concessioners from adding a markup to stamps, fishing licenses, and other items typically sold at face value.

### 3.6.4. Grocery and Pre-packaged Food

Grocery items are considered convenience items and therefore concessioners should use the markup method for this product category. Most grocery item categories sold in concessioner grocery stores are covered in the NACS guidance. Concession specialists and concessioners should work together to review and document the selected categories.

Some concessioners sell pre-packaged food items (e.g., sandwiches and yogurt) in food and beverage facilities such as cafeterias and grab-and-go outlets. Such wholesale products purchased from a vendor and not packaged by the concessioner are considered convenience items. The markup method or MSRP is recommended when setting and approving rates for these products.

### 3.6.5. Rate Methods for the Sale of Mixed Product Categories

Markup is the current preferred rate method for convenience items while CMD is the preferred rate method for merchandise. In operations where there are mixed product sales including items in each of these retail categories, the park should use the associated preferred rate method for each product category. For example, if ice is sold at both a convenience store and a gift shop, markup must be used to calculate the rate at each location. The use of the appropriate rate method outweighs any interest in having a consistent rate method storewide.
3.6.6. **Pricing Merchandise without a MSRP or CMD**

Occasionally, concessioner’s merchandise will not fit any of the criteria listed and merchandise prices may not be set using MSRP or CMD. In this case, concessioners may use the markup method using the “general merchandise” category.

3.6.7. **Markup Method for Fuel**

The preferred method for setting fuel prices is comparability. However, the park may allow concessioners to use a markup method when the comparability method is not practical. Comparability may be inappropriate for parks because comparable operations can sometimes charge lower fuel prices due to lower transportation costs, higher volume of sales, contract discounts with refiners, and other factors not available to concessioners. If comparability for fuel pricing is not appropriate at a park for any of these reasons, they may choose to approve fuel prices based on the markup method.

According to the National Association of Convenience Stores (NACS) Retail Fuels Report, despite extreme day to day volatility, retail margins for fuel are fairly consistent on an annual basis. The NACS Factbook reports an annual nationwide average markup. This markup is distributed annually by WASO with the convenience item markup percentages and posted on SharePoint in the policy library. This percentage margin includes the retailer’s profit and costs to sell fuel, including credit card fees, utilities, rent and equipment. It should be noted, this is the same source the NPS uses annually to establish the markup for convenience items. This markup only applies to automobile fuel stations, as boat fuel station may have additional operating costs.

**Determining Price**

The following example outlines how to apply the fuel markup percentage. The fuel invoice the concessioner receives should show the base price of the fuel (per gallon), as well as any federal, state, and local taxes (per gallon). Below is an example of an invoice:

```
Cust #  San Cust P.O. Date    Ref #  Hauler Truck  From  To  Items
2605  2015 87384 3/19/15  0  P IANT  NET 15 DAYS RM

Cl  Item             Description                  Qty  Price  Amount
R 1 2000  1471 GALLONS 3. FLAMMABLE LIQUID UN 1203, PG II
  PLUS 91 OCTANE  1,471GAL  NON-ETHO GAS

UNBLENDED GASOLINE MAY BE SOLD ONLY FOR THE PURPOSES AUTHORIZED UNDER 526.203 (3) STATUTES

**NET TOTAL**
  FEDERAL EXCISE-GASOLINE  1471.00  .18400EA  270.56
  FEDERAL RECOVERY FEE  1471.00  .00190EA  2.79
  FL EXCISE GASOLINE  1471.00  .16600EA  244.19
  FL ENVIRON. FEES - GAS  1471.00  .02193EA  32.26
  LOCAL OPTION DADE COUNTY  1471.00  .16500EA  248.60

INVOICE AMOUNT $3,684.90
```

Markup calculation for this invoice using a sample 7% markup. For the current fuel markup percentage, check the policy library on SharePoint.

1. The base rate per gallon including taxes for this invoice is calculated as $2.50503/gallon (1.96220 + .18400 + .00190 + .16600 + .02193 + .16900).

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**APPENDIX**
2. Any transportation fees are calculated as a “per gallon” rate. For example, assume the concessioner was charged a transportation fee of $100 for this shipment of fuel. The cost of the transportation fee per gallon is $100/1471 gallons = 6.8 cents per gallon (.068).

3. The transportation charge per gallon is added to the base rate. In this example, the total including transportation is $2.57303 (2.50503 +.068) per gallon.

4. After adding the taxes and any applicable transportation fee, the 7 percent markup is applied to determine the final approved rate. This is calculated the same way as the markup for convenience items:

   \[
   \text{Total Cost} \times (1 + \text{markup percentage}) = \text{selling price}
   \]

   \[
   \$2.57303 \times (1.07) = \$2.7531421
   \]

5. The rate is then rounded. The total of $2.7531421 for this example can be rounded to $2.75 or $2.749 per gallon.

The price for fuel will fluctuate whenever a concessioner receives a new delivery of fuel. When performing a rate check, the concession specialist uses the most recent invoice to calculate the allowed rate. As with other rate methods, this is the maximum approved rate the concessioner can charge. To be competitive, the concessioner may always charge less than the approved rate.

**Local Fuel Markup Alternative**

Concession specialists may also develop their own local markup percentage using the comparable operations’ rates. An Excel spreadsheet is available in the Contract Management Toolbox on SharePoint to help calculate the local fuel markup percentage.

### 3.7. Core Methods

The core methods allow parks to simplify the rate administration process by using different rate methods for products or services that have core and non-core offerings. The park decides which products or services are “core” to the operation and prices those using the more complex comparability process, while the non-core products or services are set by the concessioner based on what the market will bear. Methods for food and beverage (core menu), lodging (core room), retail (core retail), and other services (core services) are detailed below.

#### 3.7.1. Core Menu

Rather than setting all menu item rates using the comparability method, the concept of establishing a core menu is the preferred rate method for food and beverage services. Parks may use the comparability process if the core menu process does not produce appropriate rates.

**Core Menu Development**

The concession specialist and concessioner should work together to select core menu items. The core menu helps identify specific food categories and items that are standard on comparable menus and should appear on the concessioner’s menu.
The core menu should reflect national trends, be representative of the expectations of park visitors, and include a number of popular food and beverage selections. These selections cover food categories such as:

- Entrees (beef, fish, chicken, vegetarian, etc.)
- Beverages
- Desserts
- Appetizers

While the number of core menu items varies for each establishment, it is recommended that the core menu make up approximately 1/3 of the menu. For example, a full service restaurant may offer a full menu with 12 entree items and have a core menu consisting of four entrees, one appetizer, one beverage and one dessert. The core menu application is not appropriate for activities that include food as part of a package deal such as river running, mountain climbing, and backcountry operations since their menus are limited.

The three steps for developing a core menu are:

1. The concession specialist reviews the menus of the selected comparables and identifies the food categories generally found on each menu. Examples may include appetizers, entrees, desserts, beverages, and children’s menus.

2. The concession specialist identifies the food types made available by most of the comparables. Examples may include fish, fowl, pork, beef, pastas, diet, etc.

3. After establishing the food types that should be on the core menu, the concession specialist identifies actual food items that will appear on the core menu. These items are routinely found on the majority of the comparable menus. Other than items typically described at a certain portion size on the menu (meats and some beverages), the approval of core items is not tied to specific portions or preparations styles.

The concessioner must provide adequate portion sizes, but should have some leeway with creativity in presentations and combinations. The core menu should include items that fall under the Healthy Food Standards (released in 2012). For more information, see the Program Policy Library on the Commercial Service SharePoint page.

Parks should pay attention to selections of national interest or expectation, and items necessary to satisfy normal health considerations.

**Non-Core Menu Items**

After the park establishes the core menu, the concessioner may add items to the non-core menu without the need for a detailed park analysis. Non-core menu items should include local and regional specialty food items. The concessioner is responsible for setting non-core rates consistent
with the local market. If the park questions rates of non-core menu items, the concessioner must justify the rates.

The concessioner is not required to submit the non-core menu for review. With an appropriate core menu, there is no need for the park to be concerned with minor or subtle pricing variations in the remainder of the menu.

**Core Menu Rates**

With the establishment of the core menu, the administration of rates should be relatively simple using the selected comparables. The park may average the core menu item rates on the comparable menus and use that average as the approved rate. However, if averaging does not produce a suitable rate for the product, it is acceptable to price the concessioner’s rate at the appropriate price point within the range of comparables’ rates. For instance, with all other quality measures being equal, if the concessioner offers a salad with all entrees while the comparables do not, it is appropriate to review the range of prices the comparables offer and approve a rate at the higher end of the scale. It is unacceptable to establish a range of rates for core items and then approve only the high-end rates for menu items without any further justification.

### 3.7.2. Core Room

The core room rate method allows parks to categorize and use different rate methods for two groups of lodging rooms – core and non-core. This core room rate method addresses difficulties in finding comparables for the unique room types, while ensuring the Service is effectively meeting its obligation to approve reasonable rates in a prompt and accommodating manner.

**Core Rooms**

Core rooms must be comprised of the majority room type(s) of the lodging operation, typically standard hotel, motel, or lodge rooms. Core room rates are set using the comparability method as previously described. There may be a variety of rates set for core rooms based on the amenities provided and comparables used for each room type. For example, there may be core rooms with and without bathrooms.

**Non-core Rooms**

Non-core rooms should be unique room types, such as cabins or suites, which may be difficult to find comparables for, and should comprise no more than 1/3 of the total rooms available. The concessioner sets the rates for the non-core rooms based on market conditions, and must be able to provide justification for non-core rates if requested.

The concessioner and the park must monitor occupancy data and visitor comments to gauge the visitors’ satisfaction of the value of both core and non-core rooms.

**Core and Non-core Lodging Properties**

In some parks, there are multiple lodging properties offered by a single concessioner (e.g., upscale, mid-scale, basic and/or rustic). In such circumstances, it may be possible to apply the core method to the portfolio of properties rather than particular room-types. The park may use comparability to approve rates for the core property(ies), while allowing the concessioner to base rates for the non-core property(ies) on market conditions. Non-core properties are:

- More unique and eclectic.
• Serve a small portion of park visitors.
• Harder to find comparables for.

As with any application of the core method, it is important to evaluate performance and visitor comments to ensure visitor needs are being met relative to offerings and value.

3.7.3. Core Retail

The core retail process is not much different from the markup method, except the markup is not applied to all convenience items. Markup is only applied to a core list of items. These items are considered necessities and must remain affordable to visitors. Using the markup method for core necessities allows a nationally standardized percentage to be applied to basic need items. All other convenience items are priced using CMD, thus relieving the burden of pricing all convenience items with markup.

Core Retail Products

The following is a list of core retail items that should be priced using the appropriate markup category. All other convenience items may be priced using CMD. This list is a suggested list of core items, and the park may add or delete items as necessary for their retail operation. Parks do not need to use the North American Industry Classification System (NAICS) numbering included below.

07-00-00 Packaged Beverages
07-04-00 Juice/Juice Drinks (Includes: 100% juice, vegetable drinks, canned/juice box drinks)
07-05-00 Bottled Water (Includes: flavored, carbonated, still, fortified waters)

17-00-00 Alternative Snacks
17-02-00 Granola/Fruit Snacks
17-03-00 Health/Energy Bars (Includes: meal replacement, diet, energy, cereal, nutritional bars)

20-00-00 Non-edible Grocery
20-01-00 Laundry Care (Includes: laundry detergent)
20-02-00 Dish Care (Includes: dish soap)
20-03-00 Household Care (Includes: insecticides)
20-04-00 Paper/Plastic/Foil Products (Includes: toilet paper)

21-00-00 Health & Beauty Care
21-01-00 Analgesics
21-02-00 Cough & Cold Remedies (Includes: cough drops)
21-03-00 Stomach Remedies (Includes: antacids)
21-06-00 Grooming Aids (Includes: shampoo, oral care, deodorants, soap, shaving needs)
21-07-00 Feminine Hygiene (Includes: tampons, sanitary napkins)
21-10-00 Skin Care/Lotions/External Care (Includes: sunscreen, eye care, lip care, first aid)

22-00-00 General Merchandise
3.7.4. Core Services

The core services rate method is identical to the core room rate method, except it is used for other service types when there is a variation in the types of offerings such as tours, transportation, and guides and outfitters.

Core Services

Core services should be comprised of the most popular services the concession operation offers and should make up at least two-thirds of the concession operation’s visitation. For example, if a concessioner offers a variety of bus tours and 75% of the visitors choose to go on the two hour tour, the two hour tour is the core service. There may be more than one service type in the core services. For example, if a mountaineering guide offers three routes, but one route is only selected by 10% of the visitors, then the other two routes are the core services for that operation.

Core service rates are set using the comparability method as previously described. There may be a variety of rates set for core services based on the amenities provided and comparables used for each service type.

Non-core Services

Non-core services should be unique service types and should not comprise of more than one-third of the total services available. Rates for the non-core services will be set by the concessioner based on market conditions. The concessioner must be able to provide justification for non-core rates if requested.

The concessioner and the park must monitor visitor comments to gauge the visitors’ satisfaction of the value of core and non-core services, and to monitor the effectiveness of the core service method.

3.8. Financial Analysis Method

This method provides a process for calculating rates at the beginning of a contract using a financial analysis and annually adjusting the rates using an index. This method may be useful for unusual services such as seaplane rides, mountaineering services, bathhouses, ferry services or river running operations. It is intended for use when:

- Comparables are not available.
- No other rate method can be used.
- There is a need to account for unique aspects of the business that other rate methods cannot address.

The steps involved with this method are:

Establish the Initial Specified Rate - The NPS representative or consultant may use a number of methods to develop the base rate, such as:

- Calculating a build-up of operating costs.
• Using industry statistics or publications.
• Performing an economic feasibility study.
• Using another method deemed appropriate by the regional office or WASO.

The established base rate must be fair to visitors and provide a reasonable opportunity for a profit for the concessioner. The superintendent may request assistance from the regional office or the WASO Commercial Services Program.

**Incorporate the Rate into the Contract** - Once the base rate is determined, the park must incorporate it into the operating plan during prospectus development. In addition, the park must identify what type of index is appropriate to use to update rates annually. The Consumer Price Index is commonly used, but other industry publications or indices may be used where appropriate.

**Adjust the Rate Annually** - The rate is adjusted annually using the chosen index and updated in the operating plan. Indexing should not exceed four years before reestablishing the base rate (by updating the financial analysis) on the fifth year.

---

### 3.9. Indexing Method

Indexing is a procedure for adjusting concessioner rates that were set using either comparability or a financial analysis. It is not a stand-alone method to determine rates. Indexing can reduce the administrative burden on both concessioners and NPS personnel by eliminating the need for a comparability study to permit an adjustment.

A price index is a ratio of related prices for commodities or groups of commodities to prices in a base year. The percentage change in prices (inflation rates) is calculated by dividing the change in the index over a period of time, by the index at the beginning of the same period.

The most commonly applied index, CPI, is compiled by the Bureau of Labor Statistics of the Department of Labor. CPI breaks down data for specific products and services into a “U.S city average” index, as well as indices for specific cities and regions. Generally, the recommended CPI to use is the Consumer Price Index for all Urban Consumers (CPI-U) for “all items”, U.S city average. This index tends to be more stable over time, with fewer fluctuations up and down than tend occur with the more specific region or city CPIs. Other CPIs may be more appropriate in certain circumstances. In addition, indices other than CPI may be used if agreed upon by the park and concessioner. Parks should consult their regional office to determine the appropriate index if they are unsure. The index to be used should be documented in the operating plan.

Examples of CPIs for specific products and services offered by NPS concessioners are identified in the following chart:

<table>
<thead>
<tr>
<th>NPS Concessioner</th>
<th>Corresponding CPI Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restaurants (food service)</td>
<td>Food away from home</td>
</tr>
</tbody>
</table>

**TIPS AND TOOLS**

Looking for recent CPI data? The SharePoint Contract Management Toolbox has CPI data available for lodging, food and beverage, transportation, recreation, and other service types.
Concessioner rates can be approved using the indexing method for four years. They should not be indexed for a fifth consecutive year, and another method must be used, such as comparability.

**Example of Indexing**

The following section shows a sample of the CPI data available and the Index Pricing Worksheet used in this exercise.

In February 2016, the concessioner at Mammoth Cave National Park requests a price increase for hamburgers in his restaurant. The most recent approved price for a hamburger is $10.00, which was approved in February 2015 through comparability and he would like to raise the price to $12.00, which would be a 20% increase.

The operating plan specifies using the CPI-U price index for the “U.S. city average” of “all items” (see example below). The CPI table indicates that from February 2015 to February 2016, those food prices have increased by 1%. On this basis, the concessioner would be limited to a 1% increase, for a total price increase to $10.10.

**Sample CPI Index**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. city average</td>
<td>234.711</td>
<td>237.945</td>
<td>237.838</td>
<td>237.336</td>
<td>236.625</td>
<td>236.916</td>
<td>237.111</td>
</tr>
<tr>
<td>Region and area size</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northeast urban</td>
<td>250.619</td>
<td>252.922</td>
<td>252.504</td>
<td>252.573</td>
<td>251.670</td>
<td>251.739</td>
<td>252.250</td>
</tr>
<tr>
<td>Size B/C - 50,000 to 1,500,000</td>
<td>147.565</td>
<td>148.667</td>
<td>148.569</td>
<td>148.509</td>
<td>148.196</td>
<td>148.264</td>
<td>148.466</td>
</tr>
<tr>
<td>Size A - More than 1,500,000</td>
<td>222.301</td>
<td>225.184</td>
<td>225.050</td>
<td>224.009</td>
<td>222.722</td>
<td>223.301</td>
<td>223.196</td>
</tr>
<tr>
<td>Size D/E - Less than 50,000</td>
<td>110.00</td>
<td>111.293</td>
<td>111.739</td>
<td>111.806</td>
<td>111.205</td>
<td>111.269</td>
<td>111.335</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item Price (A)</th>
<th>Date (B)</th>
<th>CPI (C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Proposed Rate</td>
<td>$12.00</td>
<td>2016</td>
</tr>
<tr>
<td>(2) Previous Approved Rate</td>
<td>$10.00</td>
<td>02/2016</td>
</tr>
<tr>
<td>(3) Line = (1) minus line (2)</td>
<td>$2.00</td>
<td>02/2015</td>
</tr>
<tr>
<td>(4) Line = (3) divided by line (2)</td>
<td>20%</td>
<td></td>
</tr>
</tbody>
</table>

If line (4) column (A) is greater than line (4) column (C), see below. Otherwise enter the requested price on line (9) below.

(5) Enter amount on line (2) column (A) $10
(6) Enter amount on line (4) column (C) 1%
(7) Multiply line (5) by line (6) 0.10
(8) Add line (5) and line (7) $10.10

| 9) Approved Indexed Price | $10.10 |
4. Utility Costs

In accordance with DO35B, the NPS must recover costs for providing utilities to non-NPS users, including concessioners. If approved by the park, the concessioner may choose to charge an add-on to its rates to account for a higher utility rate than what the comparables are paying. Parks may calculate add-ons using one of two ways, depending on whether the contract was issued before or after the Commercial Services Impacts and Changes in Utility Charging Policies and Procedures Related to Director’s Order 35B memo issued on January 31, 2013.


If a contract was issued prior to the Utility Charging Policies and Procedures Related to DO35B memo dated January 31, 2013, a utility-add (sometimes referred to as a pass-through) is allowed if the concessioner’s utility costs are higher than comparable utility costs outside the park. The add-on is only allowed on NPS-produced utilities, not those provided by a third-party utility provider. The steps to determine the annual add-on amount are:

1. Compare the NPS-provided utility rates with the utility rates of areas outside the park, preferably where rate comparables are located. If the NPS rates are equal or lower than the comparable utility rates, no add-on is allowed.
2. If the concessioner’s utility rates are higher, multiply the difference between the two rates by the approximate annual usage. This will give the estimated amount of utility add-ons allowed for the year.

Example: If the concessioner uses 800,000 gallons of water per year and the NPS charges the concessioner $20.00 per 1,000 gallons of water, but the gateway community charges only $10.00 per 1,000 gallons, then the annual add-on amount allowed for that year is $8,000.

4.2. Calculating Utility Add-ons for Contracts Issued After January 31, 2013

Contracts issued after January 31, 2013 have utility add-ons approved during prospectus development and stated in the operating plan and business opportunity. The utility add-on is typically defined as a percentage of gross receipts and represents the estimated amount the concessioner will pay in utility costs compared to similar operations in the private sector.

Example: During prospectus development it was determined the concessioner is allowed a utility add-on equal to 2% of gross receipts to account for its higher utility costs. If the concessioner’s estimated gross receipts are $500,000 for next year, the concessioner is allowed to collect $10,000 in utility add-ons for next year.

4.3. Utility Add-on Management for All Contracts

Add-on Distribution

The concessioner must submit an annual add-on distribution plan to the park for approval. Utility add-ons must be distributed across those services that are predominant users of the utility (typically lodging and food and beverage). When making this calculation, the concessioner should employ a reasonable method such as using the ratio of departmental revenue relative to gross receipts. Annually, the Service will review and approve the distribution as appropriate. Add-ons can be applied as either a flat dollar amount (e.g. $2 per room night) or a percentage (e.g. 3% of F&B receipts). The distribution plan should show:

- Estimated units to be sold or dollar volume.
- Amount of add-on shown as a dollar amount or as a percentage.
- Estimated additional revenue.
- An explanation if a decrease in units or volume sold is expected.

The following table is an example of a concessioner’s add-on distribution request. The format is recommended but not required. It provides all of the necessary information needed for NPS review and documents the justification for the final decision. It is the park’s responsibility to outline to the concessioners exactly how to request the rate adjustment.

<table>
<thead>
<tr>
<th>Product/Service</th>
<th>Estimated Units to be Sold Annually</th>
<th>Add-on Amount</th>
<th>Estimated Add-on Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lodging Rooms</td>
<td>5000</td>
<td>$1.00</td>
<td>$5,000</td>
</tr>
<tr>
<td>Boat tours (units)</td>
<td>2000</td>
<td>$1.00</td>
<td>$2,000</td>
</tr>
<tr>
<td>Food and Beverage</td>
<td>$100,000</td>
<td>1%</td>
<td>$1,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Estimated Add-on Revenue</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$8,000</td>
</tr>
</tbody>
</table>

Goods and services adjusted should affect a wide range of visitors. The superintendent should discuss any concerns about the proposed adjusted rates with the concessioner. If the rate adjustment exceeds 15% of the base price, the superintendent should request the concessioner spread the adjustment over more items or classes of merchandise. Differences that cannot be resolved are treated as an appeal and referred to the regional director following the standard rate appeal procedures.

**Rates and Receipts**

The concessioner must incorporate the add-on amount into the advertised rate or price, and may not show utility add-on amounts as a separate line item on billings (receipts). The utility add-on is not added to items that are priced using MSRP or CMD. The concessioner may have a small notice near cash registers or on its website about the addition of a utility add-on to rates. Such notices must not mischaracterize the allowable add-on as a tax or required-NPS charge.

**Reconciliation**

The park must reconcile utility add-ons at least once each year to ensure the concessioner has collected the appropriate amount for that year. During the last year of the contract, it is recommended that the concessioner reconciles utilities more frequently to avoid having a large surplus or balance due at the end of the contract.

WASO developed a spreadsheet to assist in tracking utility add-ons through the term of a contract. The spreadsheet is available on the [SharePoint Contract Management Toolbox](#).

To reconcile and calculate add-ons for the next year, the concessioner must submit their year-end data for actual revenue, add-ons collected, and utility costs as soon as possible after the year’s end. A due date for this information should be added to the operating plan.
5. Miscellaneous

5.1. Reduced Rates to Government Employees

The Concessioner must include reduced rates for lodging for federal government employees on official business as part of its approved rate requests. Federal employees on official business and others on park-related business, as designated by the superintendent, may also receive reduced rates (i.e., complimentary or reduced price tickets) for transportation. Reduced rates for transportation may only be given if extra seats are available and may not take the place of a paying customer. Other goods and services may not be provided to government employees or their families without charge or at reduced rates unless they are equally available to the public.

5.2. Reservations and Deposits

Concessioners should develop reservation procedures, including standards for deposits and cancellations, which are patterned after those businesses used as comparables. The concessioner’s approved rate schedule and advertising material must state in detail the conditions under which deposits will be refunded or cancellation fees charged. Reservations may not be accepted more than two years in advance for accommodation facilities or other services such as trail rides, river runners, or houseboats.

5.3. Minimum Length of Stay Restrictions

A minimum length of stay restriction requires that a customer make a lodging reservation for a minimum specified number of consecutive nights. For example, a hotel may require a minimum stay of two consecutive nights over a holiday weekend. This strategy allows the hotel to develop a relatively even occupancy pattern and it is common for resorts to use this approach during peak occupancy periods or during special events. Concessioners may implement this strategy if they can document similar strategies at its comparables and ensure that such minimum stays are reasonable given the concession visitation patterns.

5.4. Third-party Sales, Travel Agencies, and Intermediaries

Third-party companies (travel agencies, online booking engines, etc.) that are selling rooms or services for the Concessioner must sell those rooms or services at or below the NPS-approved maximum rate. The Concessioner must include any service fee or commission that the third party charges in the approved maximum rate.
6. Glossary

**Actual Comparables**: Those businesses selected from the list of potential comparables determined to be the most similar to the concessioner’s operation.

**Competitive Market Declaration (CMD)**: Method of rate administration for those concessioners operating in a competitive market and deriving no competitive advantage from being located in a park, or when prices for items or services are routinely negotiated between the buyer and seller (such as boats and antiques).

**Consumer Price Index (CPI)**: An index of prices used to measure the change in the cost of basic goods and services in comparison with a fixed base period.

**Convenience items**: Products that are generally consumed regularly and viewed as necessities. Examples include ice, food, and personal care products.

**Core Method**: Method of rate administration that sets rates for core services or items based on comparability, while non-core services or items are priced by the concessioner based on what the market will bear.

**Direct Comparability**: Method of rate administration that compares concession operations and rates to the external market using specific criteria.

**Extra Quality Features (EQFs)**: Additional attributes that add value. The purpose of including EQF information is to more accurately determine the value provided by the concessioner relative to the comparables.

**Financial Analysis Method**: Method of rate administration used when comparables are not available for unusual services, such as seaplane rides, mountaineering, bathhouses and interpretive services. Rates are established during the contracting process.

**Full Review**: Direct Comparability process which requires an onsite visit to collect data. This is typically used for more complex operations such as hotels and full service restaurants.

**Indexing**: Method of rate administration which uses the consumer price index (CPI) or other indices to adjust prices.

**Limited Review**: Direct Comparability process which permits the collection of data by telephone, internet or other correspondence. This is used for smaller, less complex operations.

**Markup Percentages**: The profit percentage that is added to the product cost to establish the selling price. The following formula is used to calculate markup percentages:

\[
\text{Total Cost} \times (1 + \text{markup percentage}) = \text{selling price}
\]

**Potential Comparables**: Businesses suggested by either the concessioner or park personnel as a candidate for being comparable to the concession operation.
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Leasehold Surrender Interest
Guide - DRAFT

October 2015
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- Why Estimate LSI Value?

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INTRODUCTION

This Leasehold Surrender Guide describes the basic elements of Leasehold Surrender Interest ("LSI") under standard NPS Concession Contracts and describes the NPS methodology for estimating the value of LSI using the standard LSI formula. (Some NPS concession contracts contain non-standard LSI provisions. As such non-standard provisions vary, they are not discussed in this Guide).

This Guide has been developed in conformance with the requirements of the National Park Service Concessions Management Improvement Act of 1998, P.L. 105-391 (the “1998 Act”), 36 CFR Part 51 (the NPS concession contracting regulations which implement the 1998 Act), and the requirements of the current NPS Category I Standard Language Concession Contract (the “LSI Contract”).

This Guide is not intended to describe all LSI requirements. NPS personnel who are engaged in the administration of LSI Contracts must be knowledgeable with and apply Part 51 and the provisions of the LSI Contract. In the event of any inconsistency between this Guide and the 1998 Act, Part 51, or the LSI Contract, the latter documents prevail.

This Guide does not adopt mandatory requirements or policy for the National Park Service or NPS concessioners.

Capitalized terms are defined in the Glossary.

Possessory Interest and Leasehold Surrender Interest


There are a variety of differences between the two laws. Of significance to this Guide is the form of compensable interest provided to concessioners in real property improvements made by concessioners. The 1965 Act provided a compensable interest in qualified real property improvements in the form of Possessory Interest (“PI”). A “PI Contract” refers to an NPS concession contract that provides for Possessory Interest awarded under the 1965 Act. The 1998 Act provides a compensable interest in qualified real property improvements (“LSI Improvements”) in the form of LSI.

Many PI Contracts are still in effect, although there are fewer every year as they are replaced by LSI Contracts. As discussed further below, when a PI Contract is replaced by a LSI contract (and the visitor services are to be continued under the new contract), the existing PI improvements are carried over as LSI Improvements to the LSI Contract.

What is Leasehold Surrender Interest?

The 1998 Act requires that NPS concession contracts that encompass certain types of real property improvements made by the concessioner (or a prior concessioner) on park area lands, provide, subject to a number of conditions, a compensable interest in the improvements, so that upon contract termination or expiration the concessioner is entitled to payment for the value of the LSI Improvements. The value of an LSI Improvement ("LSI Value"), in summary, is its Construction Cost as adjusted for inflation (using the Consumer Price Index or “CPI”), less Depreciation of the improvement.

The existence of LSI encourages concessioner investment in visitor facilities for the benefit of park area visitors. However, LSI is at least a contingent financial liability of the United States and, accordingly, must be carefully managed.

LSI does not include any interest in the land on which the LSI Improvements are located. The United States retains legal ownership of all LSI Improvements.

Part 51 and the LSI Contract, particularly Exhibits A and F of the LSI Contract, establish a number of terms and conditions regarding the nature, scope and conditions of LSI, including a detailed process with which the concessioner must comply in order to obtain LSI.
LSI is obtained by a concessioner only if all applicable contractual requirements are met.

Why Estimate LSI Value?

Estimating LSI provides NPS with the information necessary to project whether a contract can financially support new construction that will result in LSI and to estimate the funds needed to acquire LSI if circumstances warrant.

A legally binding LSI Value ("Determined LSI Value") is established (usually after contract expiration) in accordance with the procedures set forth in the LSI Contract (including possible arbitration). NPS estimates of LSI Value as described in this Guide are not legally binding either on the Concessioner or NPS.
CHAPTER 1: LSI IMPROVEMENTS

Under the terms of an LSI Contract, a concessioner is eligible to obtain LSI only with respect to LSI Improvements it makes or provides pursuant to the terms and conditions of a concession contract. A Capital Improvement may qualify as an LSI Improvement only if the improvement is:

- Construction of a complete new Structure (or complete new addition to an existing Structure, i.e., a new wing);
- Completion of a Major Rehabilitation; or
- Installation or replacement of a Fixture or Non-Removable Equipment.

In addition, in order to qualify as an LSI Improvement, the improvement must be either an LSI Improvement acquired from a former concessioner or one:

- Built by the concessioner with concessioner funds (but not from Repair and Maintenance Reserve funds as discussed below);
- Made within the boundaries of a park area and on land owned by the United States; and
- Approved and constructed in strict accordance with the terms of the applicable LSI Contract.

Construction of a New Structure

A “Structure” for LSI purposes is a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A Structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, and sidewalks) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of the Structure. Landscaping that is integral to the construction of a Structure is considered as part of a Structure.

Personal Property of any nature, including interior furnishings, is not part of a Structure.

The replacement of a Component of an existing Structure (e.g., a roof replacement of an existing building) does not constitute the construction of a Structure. The replacement of a Component of a Structure is considered as Repair and Maintenance of the Structure as discussed below. A complete new Structure must be constructed in order for LSI to be obtained. However, construction of a new addition to an existing Structure (e.g., a new wing) is considered as construction of a new Structure.

Major Rehabilitation

A “Major Rehabilitation” for LSI purposes is (1) a planned, comprehensive rehabilitation of an existing Structure that (2) NPS approves in advance and determines is completed within 18 months from start of the rehabilitation work; and (3) the Construction Cost of which exceeds 50 percent of the Pre-Rehabilitation Value of the Structure.

The Pre-Rehabilitation Value of an existing Structure is the replacement cost of the Structure less depreciation.

A rehabilitation project, accordingly, must meet all of the following requirements to qualify as a Major Rehabilitation:

- Planned, comprehensive rehabilitation – a planned (in advance of construction) Comprehensive rehabilitation that is large in scope (i.e., in effect, nearly equivalent to the construction of a new Structure).
- Approved by NPS in advance – in accordance with the terms of the applicable contract, all Major Rehabilitations must receive NPS written advance approval before a proposed rehabilitation commences.
Completed within 18 months – a Major Rehabilitation must be completed within an 18 month period from the date construction commences unless there are special circumstances in which NPS approves a longer time frame (e.g., short operating season and no access to the property during the off season).

Exceeds 50% of the Pre-Rehabilitation Value – the total cost of the rehabilitation must be greater than one-half of the Pre-Rehabilitation Value of the Structure to be rehabilitated.

Fixtures and Non-Removable Equipment

A “Fixture” for LSI purposes (the term also refers to Non-Removable Equipment) is (1) a manufactured item of Personal Property of independent form and utility (2) necessary for the basic functioning of a Structure (3) that is affixed to and considered to be part of a Structure such that legal title to the Fixture is held by NPS as part of the real property once installed. The definition of a Fixture for LSI purposes may differ significantly from the term as sometimes used in the construction or real estate industries.

Accordingly, an object (other than a floating dock- which is deemed by regulation to be a Fixture) must meet all of the following requirements to qualify as a Fixture:

- Manufactured item of Personal Property – see discussion of Personal Property below.
- Of independent form and utility – the object has utility in more than one place and does not require significant modifications to the Structure in order to install.
- Necessary for the basic functioning of a Structure – the basic functioning of a Structure applies only to the physical Structure and not to the specific use of the Structure. For instance, the heating and cooling system of a building is necessary for its basic functioning. However, a walk-in freezer, although necessary for a particular use of the Structure, is not necessary to its basic functioning.
- That is affixed to and considered to be part of the Structure – the object cannot be removed without causing significant damage to the Structure.
- Such that title is held by NPS as real property once installed – all permanent Structures on park lands, including their Fixtures, are owned by NPS.

Fixtures do not include building materials (e.g. wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Refer to Appendix 3 for Fixture and non-Fixture examples.

Floating docks (but not other types of floating property) are considered to be Non-Removable Equipment (Fixtures) for LSI purposes pursuant to regulation.

Personal Property

Personal Property for LSI purposes is an object that is not affixed to and/or not considered to be part of a Structure. LSI is not obtained in Personal Property as LSI is only obtained in real property.

Trade Fixtures

“Trade Fixtures” for LSI purposes are Personal Property attached to and/or located within real property for business purposes, such as display counters. Trade Fixtures, even though commonly referred to as “fixtures,” often consist of items of Personal Property that do not meet the LSI definition of a Fixture. The LSI definition of a Fixture must be applied to each item identified as a Trade Fixture to determine if it in fact qualifies as an LSI Fixture.

Trade Fixtures (as the term is generally used in private industry) include:

<table>
<thead>
<tr>
<th>Operation</th>
<th>Trade Fixture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restaurant</td>
<td>banquetttes, stoves, refrigerators</td>
</tr>
<tr>
<td>Gift Store</td>
<td>shelving to hold product, store signs</td>
</tr>
</tbody>
</table>
Hotel washers, dryers

These objects, although considered as “Trade Fixtures” in private industry, would not be considered to be Fixtures for LSI purposes but as Personal Property to which LSI would not apply.
CHAPTER 2: REPAIR AND MAINTENANCE DOES NOT RESULT IN LSI

**Repair and Maintenance**

The term “Repair and Maintenance” refers to all actions taken to repair and maintain the condition of Improvements. Repair and Maintenance does not include the construction of new Structures, Major Rehabilitations, or the installation or replacement of Fixtures. Accordingly, Repair and Maintenance activities cannot result in LSI, no matter how large or expensive.

For example, replacing a Component of a Structure (e.g., replacing a roof of an existing Structure or repaving a driveway) is a Repair and Maintenance activity that does not constitute the construction of a Structure.

The use of the term “repair and maintenance” is not the same as that used in an accounting or financial sense (where it refers to an expense activity).

**Repair and Maintenance Reserve**

A Category I LSI Contract (or a Category II Contract) may contain provisions requiring a “Repair and Maintenance Reserve” (RMR). Although designated a reserve, the RMR is actually a bookkeeping obligation of the concessioner and not necessarily a separate account maintained by the concessioner in an escrow-type arrangement. The obligation requires actual funding when NPS directs the concessioner to perform a project.

This financial obligation is calculated by applying the specified contractual percentage against the concessioner’s annual gross receipts and is cumulative over the life of the contract. That is, unspent monies in any year continue to be an obligation of the concessioner until the contract ends. Read the contract. Many contracts allow the concessioner to retain unspent funds when the contract ends and others require the unspent funds to be converted to franchise fees.

Of critical importance to both the NPS and the concessioner is the understanding that the concessioner is required to maintain the facilities to the satisfaction of NPS and may be required to expend funds for repair and maintenance beyond the Reserve requirements. As such, the RMR amount is a minimum requirement under the direction of NPS.

The use of funds in the RMR account is strictly limited:

- Reserve funds may be used solely to carry out, on a project basis in accordance with a contract’s exhibit regarding RMR, Repair and Maintenance projects that are non-recurring within a seven-year time frame. “Non-recurring within a seven-year time frame” means the renewal or replacement of Components such as windows, roofs, subfloors, etc., that occurs on a frequency of greater than seven years. It does not include the installation or replacement of Fixtures, even if such replacement occurs on a frequency of greater than seven years.

- RMR funds may not be expended for the construction of new Structures, Major Rehabilitations, or the installation or replacement of Fixtures, i.e., actions that would result in LSI. RMR funds also may not be used for routine, operational maintenance of facilities or housekeeping and grounds keeping activities.
CHAPTER 3: APPROVAL OF LSI CONSTRUCTION

The LSI Contract, particularly its Exhibits A and F, establishes a number of requirements regarding the construction of LSI Improvements. If otherwise eligible LSI construction is undertaken in violation of the requirements of the contract, the construction activity does not result in an LSI Improvement and no LSI is obtained by the concessioner.

Among other matters, the LSI Contract provides:

- A detailed definition of LSI eligible Construction Costs (both direct and indirect);
- That a concessioner may not commence construction of an LSI Improvement without advance written NPS preliminary approval, including preliminary approval of estimated Construction Costs; and
- That after construction is complete, NPS review and final approval of the completed project is required, including approval of the Construction Cost for LSI purposes, in order for LSI to be obtained.

In addition, policy requires for all projects for which LSI is sought that the concessioner submit written certification from a certified public accountant certifying that all components of the construction costs were incurred and capitalized by the concessioner in accordance with Generally Accepted Accounting Principles, and that all components are eligible direct or indirect construction costs as defined by 36 CFR Part 51.

Exhibit F of the LSI Contract provides a detailed process for the advance and final review and approval of concessioner construction projects, including LSI projects.
CHAPTER 4: ALLOCATING LSI VALUE AMONG LSI IMPROVEMENTS

Typically the LSI Improvements of an LSI Contract are comprised of more than one improvement, e.g., a hotel building, a gift store and a gas station. Each of these separate Structures (referred to for allocation purposes as a “Unit” of the LSI Improvements) in turn is comprised of a number of specific Components. The overall LSI Value of all LSI Improvements must be allocated to each Unit of the LSI Improvements and, further, to each Component of each Unit.

Allocating LSI Value to the Unit Level

Allocating LSI Value to the Unit level generally only occurs when a PI Contract is replaced by an LSI Contract (as discussed further below). This is because, unlike LSI Contracts, the value of Possessory Interest under a PI Contract typically is an aggregate number even though the improvements in which there is Possessory Interest may consist of several Units. This aggregate number is carried over to the LSI Contract as the “Carryover LSI Value” (see discussion below) of LSI Improvements under the new LSI Contract.

The information contained in a Condition Assessment (CA), particularly its Depreciation Analysis Report (DAR), provides NPS the data needed for this Unit level allocation.

Allocating LSI to the Component Level

What is a Component?

A Structure represents a collection of elements (Components) that contribute to its form and functionality. These Components include such items as foundations, walls, roof, floors, and electrical, plumbing and heating elements.

The American Society for Testing and Materials (ASTM) has developed a system for categorizing and naming the Components of Structures. This system, which is widely used in private industry, is called Uniformat II. Uniformat II utilizes three levels of Component identification (Levels 1, 2 and 3), to describe the Components that comprise a typical Structure. The NPS has adopted ASTM’s Uniformat II standards for Component identification.

It is important to note the difference in levels within Uniformat II. Level 1 breaks a Structure down into seven Components, Level 2 into 23 Components, and Level 3 into 98 Components). Appendix 5 – presents a partial summary of Uniformat II, Levels 1, 2 and 3.

Why Use a Component Level Breakdown?

A Structure rarely fails as a whole; rather, its Components fail at different times. Therefore, it is prudent to allocate LSI Value to the Component level to more accurately estimate LSI Value, monitor the effectiveness of routine and preventive maintenance activities, and identify future maintenance and funding requirements necessary to maintain the Structure in good condition. Allocating to the Component level also greatly assists in estimating Depreciation and tracking concessioner-funded activities for accurate LSI accounting.

LSI Allocation to the Component level is done for internal NPS tracking purposes only. LSI tracking is shown to the Unit level on Exhibit G to an LSI Contract.

How are Components Identified?

The information contained in a CA provides NPS the basis for Component (as well as Unit) level allocation. The CA contains the findings of a visual inspection of structural, architectural, mechanical, accessibility and electrical Components of each real property improvement assigned to a concessioner under a PI or LSI Contract. The assessment is conducted by architectural and engineering subject matter experts.
CHAPTER 5: LSI VALUE

LSI Value Terms

This Guide utilizes several different terms to refer to LSI Value in differing circumstances. They include:

Carryover LSI Improvement - an improvement in which PI or LSI under a prior contract is carried over as LSI to a new contract.

Carryover LSI Value - refers to the LSI Value in a Carryover LSI Improvement. A Carryover LSI Value may be adjusted during the term of the applicable contract as described below.

CPI Adjusted LSI Value - refers to Carryover LSI Value and New LSI Value (as applicable) after adjustment for inflation (using the Consumer Price Index or "CPI").

Determined LSI Value - refers to the value of an LSI Improvement as formally established through the procedures described in the LSI Contract (mutual agreement or arbitration). A Determined LSI Value is not an estimate of LSI Value but a legally binding value determination.

Estimated LSI Value - refers to the estimate of the value of an LSI Improvement at a specific point in time after adjustment for inflation (using the CPI) and estimated Depreciation.

LSI Improvement - is the general term referring to a real property improvement in which there is LSI.

LSI Value – is the general term referring to the value of an LSI Improvement.

New LSI Improvement - is a new real property improvement (approved by NPS for LSI purposes) constructed during the term of an LSI Contract. A New LSI Improvement becomes a Carryover LSI Improvement under the next contract.

New LSI Value - is the value of a New LSI Improvement after completion and subsequent approval by NPS of its Construction Cost. A New LSI Value may be adjusted over the term of a contract as described below.

Unadjusted LSI Value - refers to Carryover LSI Value and/or New LSI Value prior to adjustment for inflation (CPI) and Depreciation. The Unadjusted LSI Value of a Carryover LSI Improvement is equal to its Determined LSI Value from the prior contract. The Unadjusted LSI Value of a New LSI Improvement is equal to its approved Construction Cost.

Carryover of Existing Improvements to a New LSI Contract

Prior LSI Contract to a New LSI Contract

The Determined LSI Value of an LSI Improvement existing under a prior LSI Contract is carried over to the new contract as the Carryover LSI Value of the improvement. If there is more than one LSI Improvement, each Unit will have its own Carryover LSI Value.

Carryover of Possessory Interest from a PI Contract to an LSI Contract

Possessory Interest improvements under a PI Contract become Carryover LSI Improvements when a new LSI Contract is issued. The Carryover LSI Value in the LSI Improvements (former PI improvements) is the Determined LSI Value of the former PI improvements established under the terms of the PI Contract.

As discussed above, however, the value of Possessory Interest under a PI Contract typically is determined as an aggregate number even though the improvements in which there is Possessory Interest may consist of several Units. This aggregate number is carried forward to the LSI Contract as the total Carryover LSI Value of all LSI Improvements.
For example, if there were five Units of PI improvements under a PI Contract with a determined aggregate value of $5 million, the allocation of the total $5 million Carryover LSI Value to the Unit level may result in a determination that the Carryover LSI Value of three of the Units is $1 million each, and the other two are $1.5 million and $.5 million respectively.

If an allocation to the Unit level has not been made by the commencement of the LSI Contract, NPS may require the new concessioner to negotiate allocation of the total Carryover LSI Value to the Unit level of the LSI Improvements, and, if negotiations fail, to submit to binding arbitration as to the allocation.

**Carryover LSI Value Allocation**

Accordingly, at the commencement of an LSI Contract, if the LSI Value has previously been allocated on a Unit basis, a Carryover LSI Value for each LSI Improvement (whether carried over from a prior LSI Contract or a prior PI Contract) is included in the contract’s Exhibit G. If an allocation to the Unit level has not previously been made, Exhibit G of the contract will include a list of all Units of the LSI Improvements and a total Carryover LSI Value of the LSI Improvements. (Allocation to the Unit level will subsequently occur and Exhibit G will be amended accordingly.) If there are no existing LSI Improvements, the Carryover LSI Value in Exhibit G is entered as $0.

**Construction of New LSI Improvements during the Term of an LSI Contract**

If a New LSI Improvement is constructed during the term of an LSI Contract, the New LSI Value of the New LSI Improvement is tracked from the date of substantial completion.
CHAPTER 6: LSI CREDITING PROCESS

Approval of LCEEs

An LSI Contract may have a Carryover LSI Value in existing LSI Improvements carried over from a prior LSI or PI Contract. During the term of an LSI Contract, a concessioner may be authorized or required to construct New LSI Improvements (i.e., construct a new Structure, undertake a Major Rehabilitation, or install or replace Fixtures in an existing Structure).

These actions are referred to as LCEEs (“LSI Credit Eligible Events”) in this Guide.

Each LCEE is a New LSI Improvement with an approved, separate New LSI Value. In addition, an LCEE involving the replacement of existing Fixtures results in the adjustment of the LSI Value in the LSI Improvement in which the Fixtures are installed as described below.

Most frequently, LCEEs are called for by the CFIP (“Concessioner Facilities Improvement Program”) provisions of an LSI Contract. However, not all the facility enhancements required by a CFIP are likely to qualify as LCEEs.

For example, many CFIP projects require a rehabilitation of an existing LSI Improvement that does not meet Major Rehabilitation requirements, or require the replacement of Personal Property.

Accordingly, the CFIP must be split into LCEE and non-LCEE components to properly administer LSI.

Pre-Construction (Preliminary) Approval of LCEEs

Under the requirements of the LSI Contract, the concessioner must submit to NPS for advance approval all proposed real property improvement projects and identify any that may result in LSI (LCEEs). NPS reviews proposed projects, and if an LCEE is involved, approves the proposed LCEE project only if it determines that, among other matters, the proposed LCEE:

• is to be constructed under an LSI Contract;
• is the construction of an LSI Improvement, i.e., is either (1) the construction of a new Structure; (2) a Major Rehabilitation; or, (3) the installation or replacement of a Fixture;
• is not Repair and Maintenance of an existing LSI Improvement;
• is either contractually required or is otherwise an appropriate and LSI construction activity;
• is to be paid for by the concessioner (but not with RMR funds);
• is supported by a concessioner’s estimate of Construction Costs that demonstrates the costs are valid and are all eligible Construction Costs as defined in Exhibit A of the LSI Contract;
• is consistent with NPS estimates of the Construction Cost, or, if not, can be duly reconciled with NPS estimates.

Post Construction (Final) Approval of LCEEs

In accordance with the LSI Contract, after a preliminarily approved LCEE is completed, the concessioner submits proposed Construction Costs and as-built drawings to NPS for final review and approval. NPS reviews the as-built drawings to determine that the project was built as preliminarily approved and reviews reported costs to determine that they are valid and to identify eligible Construction Costs for LSI purposes. Each reported cost must be reviewed separately in this regard as the Construction Costs of most LCEEs as submitted by concessioners may include a number of ineligible costs.

An essential requirement for a Construction Cost to be eligible for LSI is that it be capitalized by the concessioner in accordance with Generally Accepted Accounting Principles (GAAP), not expensed. NPS
policy requires that the concessioner’s Certified Public Accountant (“CPA”) must certify that all Construction Costs have been capitalized by the concessioner.

In addition, to be LSI eligible, all Construction Costs (including wages) must be found to be no higher than those prevailing in the locality of the project.

NPS also determines that all other LSI-related contractual requirements have been met before giving final approval to the LCEE and determining final Construction Cost for LSI purposes. The LCEE results in a New LSI Improvement that has a New LSI Value as determined in the LCEE approval process.

**Crediting LSI Value as a Result of LCEEs**

The New LSI Value of a New LSI Improvement is established when an LCEE is completed and approved by NPS during the term of the contract. The calculation of the value or change in value varies depending on whether the LCEE is the construction of a new Structure, a Major Rehabilitation, or the installation or replacement of a Fixture.

**LCEE: New Structure**

When an LCEE is the construction of a new Structure, the new Structure is added to Exhibit G of the LSI Contract as a New LSI Improvement under the terms of the contract with the New LSI Value of the Structure. Going forward, this New LSI Value may be adjusted as a result of further LCEEs.

**Note:** As part of the review of the LCEE, NPS must identify the installation costs of Fixtures that were part of the LCEE so that this information is available in the event of a Fixture replacement LCEE at a later time.

**LCEE: Major Rehabilitation**

A Major Rehabilitation is treated as the construction of a New LSI Improvement and a New LSI Value for the Major Rehabilitation is established in the amount of its approved Construction Cost. Any Carryover LSI Value in the Structure as it existed prior to its rehabilitation continues to be carried forward as the Carryover LSI Value.

For example, a hotel with a Carryover LSI Value of $500,000 undergoes a Major Rehabilitation. The approved Construction Cost of the Major Rehabilitation is $1.3 million. After the rehabilitation is complete, the existing $500,000 Carryover LSI Value in the Structure would remain and a New LSI Improvement would be established for the Major Rehabilitation with a New LSI Value of $1.3 million, making the aggregate LSI for the hotel $1.8 million.

**Note:** This example assumes that the Major Rehabilitation did not involve the replacement of Fixtures. If it did, the continuing Carryover LSI Value of the pre-rehabilitation Structure would be adjusted as discussed below.

**LCEE: New Fixture**

When a new Fixture (a Fixture that does not replace an existing fixture) is installed in an existing LSI Improvement, it is tracked as a New LSI improvement with a separate New LSI Value. The LSI Value of the Structure to which the Fixture is attached is not adjusted.

**LCEE: Fixture Replacement**

When a concessioner has LSI in a Fixture that is replaced by a new Fixture, the LSI Value in the replaced Fixture is deducted, as applicable, from the LSI Value of the Structure to which the Fixture was attached, and, the Fixture replacement is tracked as a New LSI Improvement with a separate New LSI Value.

As such, a concessioner that proposes an LCEE that includes the replacement of an LSI Fixture in an existing LSI Improvement must provide documented evidence of the LSI Value of the Fixture to be replaced and the Construction Cost of the replacement Fixture. The concessioner, in effect, will only receive LSI Value for the difference between these two amounts. (It is possible to have a negative result, i.e., the Construction Cost of the replacement Fixture may be less than the LSI Value of the replaced Fixture).

This methodology is also utilized where a Major Rehabilitation involves Fixture replacement.
Note: A LSI Contract may permit the concessioner, subject to NPS approval, to install or replace Fixtures in a non – LSI Structure that is assigned to the concessioner under the terms of the contract. If such an LCEE is approved by NPS, the concessioner obtains New LSI Value in the installed Fixtures as a New LSI Improvement. The concessioner does not obtain LSI as a whole in the Structure in which the Fixtures are installed.

Example – Concessioner does not have LSI in a Structure

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carryover LSI Value in Entire Structure =</td>
<td>$0</td>
</tr>
<tr>
<td>Construction Cost of new or replacement Fixture=</td>
<td>$23,000</td>
</tr>
<tr>
<td>New LSI Value in Fixture Replacement =</td>
<td>$23,000</td>
</tr>
</tbody>
</table>
Case Study 1 - LCEE: Construction of a New LSI Improvement

CC-WASO002-09 was awarded in September, 2009. Its LSI Improvements consist of one Structure, the Great Bear Hotel. The contract requires the concessioner to construct a new addition for restaurant purposes to be attached to the hotel and accessible from the hotel main lobby. After receiving all required NPS prior approvals, the concessioner completed the construction in March, 2010 in accordance with the contract and exhibits. The concessioner submitted the following proposed Construction Costs totaling $2,300,000 and requested LSI Value for the total amount:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning</td>
<td>$150,000</td>
</tr>
<tr>
<td>Site work</td>
<td>$300,000</td>
</tr>
<tr>
<td>Construction Labor and Material</td>
<td>$1,135,000</td>
</tr>
<tr>
<td>Decorating Services</td>
<td>$200,000</td>
</tr>
<tr>
<td>Dining Room and Kitchen Furnishings</td>
<td>$500,000</td>
</tr>
<tr>
<td>Inspections</td>
<td>$15,000</td>
</tr>
</tbody>
</table>

Questions:
1. Is this a LCEE?
2. Which proposed costs qualify as Construction Costs (and thus for LSI credit)?
3. Which costs do not qualify as Construction Costs? Why?
4. What is the New LSI Value for the project?

Answers:
1. Yes, construction of a new Structure under an LSI contract is an LCEE resulting in a New LSI Improvement. Additions to an existing building are considered as construction of a new Structure for LSI purposes.
2. The proposed costs that qualify as Construction Costs (and thus are eligible for LSI credit if capitalized by the concessioner) are planning, site work, construction labor and material, and inspections, as these are included in the definition of Construction Cost in Exhibit A of the contract.
3. Decorating services do not qualify for LSI Value because interior design services are not a Construction Cost as defined in Exhibit A of the contract. The dining room and kitchen furniture do not qualify for LSI Value because they are Personal Property.
4. The New LSI Value of the New LSI Improvement is: $1,600,000 (planning, site work, construction labor and material, and inspections). Note that the new addition results in a separate New LSI Value (not an increase to the Carryover LSI Value of the existing hotel).
Case Study 2 - LCEE: Major Rehabilitation

CC-WASO002-09 LSI Improvements consist of one Structure, the Great Bear Hotel. The concession contract includes a $900,000 Carryover LSI Value in the hotel building. The LSI Contract includes a CFIP for rehabilitation of the hotel to be started in October, 2010 and completed in October, 2011. The Pre-Rehabilitation Value of the hotel (usually as determined by a CA) is $1,500,000. The rehabilitation work includes replacement of existing Fixtures which have a Carryover LSI Value of $20,000 and the installation of new Fixtures with an estimated Construction Cost of $30,000. The concessioner is requesting approval of a new LSI Improvement (a Major Rehabilitation) with proposed Construction Costs of $1,080,000, as follows:

<table>
<thead>
<tr>
<th>Work Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convert 20 rooms into suites</td>
<td>$500,000</td>
</tr>
<tr>
<td>Rehabilitate the remaining bathrooms</td>
<td>$300,000</td>
</tr>
<tr>
<td>Install fire protection system throughout hotel</td>
<td>$80,000</td>
</tr>
<tr>
<td>Replace the furniture in all rooms</td>
<td>$200,000</td>
</tr>
</tbody>
</table>

Proposed Construction Cost: $1,080,000

Questions:

Does this project qualify as a Major Rehabilitation?

What are likely Fixture replacements?

Is there an adjustment to the Carryover LSI Value?

If this is a Major Rehabilitation, what is the New LSI Value in the New LSI Improvement?

What is the New LSI Value in the installed Fixtures?

Answers:

The project qualifies as a Major Rehabilitation of an existing Structure. It is a Major Rehabilitation because (1) it is “planned” in advance (in this case by NPS in the CFIP); (2) it is “Comprehensive” (as it encompasses significant actions concerning many Components of the Structure); (3) it is to be completed within eighteen months of construction commencement; and (4) the LSI eligible Construction Cost (assuming that the costs are capitalized by the concessioner) of the project exceeds fifty percent of the Pre-Rehabilitation Value of the hotel.

The room renovations and bathroom modernizations will contain some Fixtures (e.g. sinks, toilets). These items qualify as Fixture replacements. The following would not qualify as Fixture replacements:

- The fire protection system is not a Fixture replacement (but its costs are included as part of the Construction Cost of the Major Rehabilitation).
- Furniture is Personal Property. No LSI credit results.

The adjusted Carryover LSI Value in the hotel after the rehabilitation is $880,000 ($900,000 Carryover LSI Value minus $20,000 Carryover LSI Value of replaced fixtures).

The New LSI Value in the New LSI improvement (Major Rehabilitation) is calculated as follows:

<table>
<thead>
<tr>
<th>Work Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convert 20 rooms into suites</td>
<td>$500,000</td>
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<tr>
<td>Rehabilitate the remaining bathrooms</td>
<td>$300,000</td>
</tr>
<tr>
<td>Install fire protection system throughout hotel</td>
<td>$80,000</td>
</tr>
</tbody>
</table>

Subtotal: $880,000

Less Cost of Fixture Replacements: $30,000
New LSI Value in the New LSI Improvement: $850,000

The New LSI Value in the Fixture replacements (which are tracked separately) = $30,000. There are now three LSI values to track:

Carryover LSI Value of $880,000
New LSI Value for the Major Rehabilitation of $850,000
New LSI Value for the Fixture replacements of $30,000
Case Study 3 - LCEE: Fixture Replacement

CC-WASO002-09 Concession Facilities consist of one Carryover LSI Improvement, the Great Bear Hotel. The hotel has a Carryover LSI Value of $900,000. The concessioner proposes to undertake CFIP required actions and is requesting the approval of LSI credit for the estimated Construction Cost of Fixture replacements in the amount of $5,500. The Carryover LSI Value in a replaced bathroom sink is $200. The concessioner’s proposed Construction Costs are:

- Replaced a sink in room 210’s bathroom $300
- Replaced the bathroom door in room 210 $120
- Replaced draperies in the 2nd floor hall $80
- Replaced carpet in the 2nd floor hall $5,000

Total Cost: $5,500

Questions:
Would any of these activities qualify as a New LSI improvement?
How are the replacements that don’t qualify as a new LSI Improvement classified?

Based on these answers, what would be the adjusted Carryover LSI Value in the hotel if the proposed project was approved by NPS (assuming the proposed Construction Costs were approved as valid after completion)?

Answers:
The sink replacement (assuming that its costs are capitalized by the concessioner) is the only activity that qualifies as a New LSI Improvement (as a Fixture replacement LCEE).

The non-LCEE activities are:

- bathroom door replacement – building materials
- draperies – Personal Property
- carpet replacement – building materials

The Carryover LSI Value of the replaced sink ($200) is deducted from the hotel’s Carryover LSI Value. This results in an adjustment to the Carryover LSI Value in the hotel building as follows:

Carryover LSI Value in Total Structure = $900,000
Deduct $200 (cost of replaced sink) = $899,800

A New LSI Improvement is established with a New LSI Value of $300.
CHAPTER 7: CONSUMER PRICE INDEX ADJUSTMENT

The value of an LSI Improvement is its Construction Cost, as adjusted for inflation, less Depreciation. The Unadjusted LSI Values of the contract’s LSI Improvements (Carryover LSI Improvements and New LSI Improvements, as applicable), can be periodically adjusted by the applicable CPI Adjustment Rate to obtain their CPI Adjusted LSI Value.

CPI Adjustment Rate

The first step in calculating a CPI Adjusted LSI Value is to determine the applicable CPI Adjustment Rate. The CPI Adjustment rate is calculated on the basis of the Beginning CPI Index and the Ending CPI Index. The Beginning CPI Index starting point (date) for Carryover LSI Improvements is the CPI value for the month prior to the effective date of the contract. The Beginning CPI Index starting point (date) for New LSI Improvements is the CPI value for the month prior to the Substantial Completion date of the applicable improvement.

The table below is an excerpt of the CPI Index table.

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<tr>
<th>Year</th>
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</tbody>
</table>

Note: Data is not seasonally adjusted

The Bureau of Labor Statistics website (http://www.bls.gov/cpi/) provides CPI information. The indices are updated on a monthly basis. The CPI used for LSI value adjustment is the "National Consumer Price Index - All Urban Consumers."

To find the CPI Index for January 2005 (Beginning CPI Index), move down the Year column to year 2005 and go across the row to January. The Beginning CPI Index is 190.7.

To find the Ending CPI Index for September, 2006, go to the intersection of 2006 and September. The Ending CPI Index is 202.9.

The CPI Adjustment Rate is the Ending CPI Index divided by the Beginning CPI Index or 202.9 / 190.7. The result is the CPI Adjustment Rate for that time period: 1.064.
Calculating CPI Adjusted LSI Value
The next step in calculating CPI Adjusted LSI Value is to apply the CPI Adjustment Rate to the applicable Unadjusted LSI Value of the LSI Improvement.

If the Unadjusted LSI Value is $10,000 for a particular LSI Improvement, and the CPI Adjustment Rate is 1.064, the CPI Adjusted LSI Value in the LSI Improvement is $10,640 ($10,000 x 1.064).

Case Study - CPI Adjustments
CC-WASO002-99 LSI Improvements consist of one Structure, the Great Bear Hotel. In July 1999 a contract was issued for 5 years. The hotel had a Carryover LSI Value of $1,250,000. No LCEE's occurred during the term of the contract.

Questions:
1. What is the Beginning CPI Index?
2. What is the contract Ending CPI Index?
3. What is the CPI Adjustment Rate?
4. What is the CPI Adjusted LSI Value?

Answers:
1. The Beginning CPI Index is 166.2
2. The Ending CPI Index is 189.7
3. The CPI Adjustment Rate is calculated by dividing 189.7 by 166.2 = 1.141
4. The CPI Adjusted LSI Value is $1,426,250 (1.141 X $1,250,000)
CHAPTER 8: ESTIMATING DEPRECIATION

The value of an LSI Improvement (LSI Value) is the improvement’s Construction Cost, as adjusted for inflation (CPI), less Depreciation the improvement has incurred during the term of the applicable LSI Contract.

The amount of Depreciation the improvement is expected to have incurred at a specific point in time is estimated by NPS under the following methodology.

An Annual Estimated Depreciation Percentage (“AEDP”) is calculated for each of the contract’s LSI Improvements at the beginning of the LSI Contract and an AEDP is calculated for New LSI Improvements as they are placed in service during the contract term. The AEDP is derived using the estimated Remaining Life and the Design Life values attributed to each Component assessed under a CA with respect to Carryover LSI Improvements and from data obtained in the LCEE approval process with respect to New LSI Improvements.

(Note: If a CA has not been conducted prior to the commencement of an LSI Contract, straight line depreciation based on Design Life and actual age is used instead of the AEDP method. For example, if under a 10 year contract, a roof installed with a $100,000 Carryover LSI Value has a forty year Design Life, Depreciation accrues at 2.5% (or 1/40) per year, or 25% over the LSI Contract term.)

The AEDP for any particular LSI Improvement (or Component thereof) at a particular point in time is calculated by dividing one by the estimated Remaining Life of the Asset.

The AEDP can be applied at any point during the term of the contract to estimate the Depreciation percentage that will occur [or has occurred] after contract commencement. To calculate the estimated Depreciation percentage for an entire Contract Term for any particular LSI Improvement (or Component thereof), multiply the AEDP for the LSI Improvement (or Component thereof) by the number of remaining years in the Contract Term.

For example, assume that a roof (a Component of a Carryover LSI Improvement) with a Carryover LSI Value of $100,000 has a Design Life of 40 years and a Remaining Life of 25 years at the beginning of a 10-year contract.

To calculate the AEDP:

Divide one by the Remaining Life of the roof (25) = .04 or 4% AEDP per year.

To calculate the estimated Depreciation of the roof for the (remaining) Contract Term:

Multiply the AEDP (4%) by the Contract Term (10 years) = .4 or 40% estimated Depreciation over the Contract Term.

From time to time, a CA may be conducted during the term of the contract. Data from this CA, which is based on an actual inspection, will be utilized to adjust the AEDP if necessary.

For example, if a subsequent CA undertaken near the end of the term of the contract estimates that the roof has in fact only depreciated by 15% (instead of the 40% estimated to occur based on the AEDP) during the term of the contract, the AEDP would be changed to 1.5% (15% divided by 10 years) for that Component.

The difference in Depreciation percentages in this example results because the initial AEDP is a theoretical, forward-looking estimate based on industry-wide projections of the average Design Life of a Component. A subsequent CA during the term of a contract includes a new "on the ground" estimate that will take into account the current physical condition of the Asset and its Components. The re-calculated AEDP incorporates the findings of the CA with respect to observed Depreciation. For example, the roof may have been repaired from time to time over and above usual efforts so that its Remaining Life was extended beyond the period estimated in the original CA. Accordingly, a CA depreciation estimate...
should be given more credibility than an initial AEDP estimate because the CA is based on actual physical inspection of the property by a professional engineer and/or cost estimator.

**Case Study – Depreciation Estimate**

CC-WASO002-99 LSI Improvements consist of one Carryover LSI Improvement, the Great Bear Hotel. The contract was issued in 1999 with a 12 year term. At that time, the hotel's Design Life was 75 years and its Remaining Life was 70 years. The Carryover LSI Value was $1,250,000. Assume that the CPI Adjusted LSI Value of the hotel was $1,750,000 at the end of the contract term and a CA was completed in 2010 that identified the Remaining Life as 64 years.

Questions:
1. What AEDP was identified in 1999?
2. What is the estimated percentage of Depreciation over the term of the concession contract in 1999?
3. Using the 2010 CA, what is the estimated Depreciation that occurred during the contract term?

Answers:
1. In 1999, the AEDP was 1.43%. 1 divided by 70 (Remaining Life) = .0143 or 1.43% multiplied by 12 (remaining years in Contract Term))
2. The estimated percentage Depreciation projected for the Contract Term in 1999 is 17.16%. AEDP (1.43%) multiplied by the number of years in the Contract Term (12) equals 17.16%
3. 8.57%. In 1999, it was estimated that the hotel would depreciate approximately 17.2% (1.43% times 12) over the term of the contract. The Depreciation during the Contract Term based on the 2010 CA is calculated by dividing the change in Remaining Life of the hotel from the beginning to the end of the contract, by the original Remaining Life of the hotel. The difference between the Remaining Life at the beginning of the contract, 70 years, and the Remaining Life at 2010, 64 years, is 6 years. Dividing 6 years by the estimate of the Remaining Life at the beginning of the contract, 70 years, equals 0.0857 or 8.57%, the estimated Depreciation over the life of the contract.
CHAPTER 9: DETERMINING A FINAL ESTIMATED VALUE

During the term of an LSI Contract or upon its expiration, a Final Estimated LSI Value may be calculated by NPS under the methodology described above for purposes of, among other matters, negotiation or arbitration of LSI Value with a concessioner.

However, particularly with respect to Depreciation (but also with respect to other aspects of LSI Value), NPS may undertake additional estimates of LSI Value under different methodologies. The position of NPS as to what the Final Estimated LSI Value for any particular LSI Improvement is may differ significantly from the estimates provided by the methodology described in this Guide. The particular facts and circumstances of the LSI Contract and LSI Improvements involved, and applicable law, must be specifically assessed in order for NPS to take a final position on LSI Value for purposes of establishing a Determined LSI Value or otherwise.


APPENDIX 1: ACRONYMS

AEDP – ANNUAL ESTIMATED DEPRECIATION PERCENTAGE
ASTM – AMERICAN SOCIETY FOR TESTING AND MATERIALS
CA – CONDITION ASSESSMENT
CFIP – CONCESSIONER FACILITY IMPROVEMENT PLAN
CFR – CODE OF FEDERAL REGULATIONS
CPA – CERTIFIED PUBLIC ACCOUNTANT
CPI – CONSUMER PRICE INDEX
GAAP – GENERALLY ACCEPTED ACCOUNTING PRINCIPLES
LCEE – LSI CREDIT ELIGIBLE EVENT
LSI – LEASEHOLD SURRENDER INTEREST
NPS – NATIONAL PARK SERVICE
PI – POSSESSORY INTEREST
PL – PUBLIC LAW
RMR – REPAIR AND MAINTENANCE RESERVE
APPENDIX 2: GLOSSARY OF TERMS USED

1965 Act – Also known as Public Law 89-249. This was the predecessor to the 1998 Act (PL 105-391).

1998 Act – Also known as Public Law 105-391, or the National Parks Omnibus Management Act of 1998.


Annual Estimated Depreciation Percentage (AEDP) – The amount of estimated Depreciation that will occur on an annual basis during the term of an LSI contract expressed as a percentage.

Beginning CPI Index – CPI Index on the effective date of the contract for Carryover LSI Improvements or Substantial Completion date for applicable New LSI Improvements.

Capital Improvement - From Standard Contract Exhibit A. A Capital Improvement is a Structure, Fixture, or Non-Removable equipment provided by the Concessioner pursuant to the terms of the Contract and located on lands of the United States within the Area. A Capital Improvement does not include any interest in land. Additionally, a Capital Improvement does not include any interest in Personal Property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of Personal Property becomes a Fixture.

Carryover LSI Improvement - An improvement in which LSI under a prior contract is carried over to a new contract.

Carryover LSI Value – The Determined LSI Value in an existing LSI Improvement that is carried over from a prior contract to a new LSI Contract.

Component – A portion of an Asset or system.

Component Renewal – The planned replacement of a Component at the end of its Useful Life. Component Renewal/Replacement examples include the replacement of roofs; electrical distribution systems; heating and cooling systems; pavement replacement for roads, parking lots and walkways; and the rehabilitation of windows and/or replacement of windows and doors. Component Renewal/Replacement includes the deconstruction of the existing Component or system and Replacement with a new system of equal capability and performance. These actions recur on a periodic cycle of greater than seven years.

Concession Contract - From 36 CFR 51.3. A concession contract means a binding written agreement between the Director and a concessioner entered under the authority of the 1998 Act or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions.

Concession Facilities - All Area lands assigned to the Concessioner under a Contract and all real property improvements assigned to or constructed by the Concessioner under a Contract.

Concession Facilities Improvement Program (CFIP) - A contractually required improvement program that is funded by the concessioner.

Condition Assessment (CA) - From Director’s Order 80. The review and validation of the Concession Facilities inventory, including inspection of assets identifying in-depth deficiencies, and documenting the condition as measured against the applicable maintenance or condition standards. It provides the basis for long-range maintenance planning as well as annual work plans and budgets.
Construction Cost(s) – From LSI Contract Exhibit A.

Construction cost of a Capital Improvement means the total of the incurred **eligible direct and eligible indirect costs** necessary for constructing or installing the Capital Improvements that are **capitalized by the concessioner** in accordance with Generally Accepted Accounting Principles (GAAP).

**Eligible direct costs** means the sum of all incurred **capitalized** costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor's (and subcontractor's) profit and overhead (including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).

**Eligible indirect costs** means, except as provided in the last sentence of this definition, the sum of all other incurred **capitalized** costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans; plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the Concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the Concessioner are not eligible indirect costs.

**Consumer Price Index (CPI)** - From LSI Contract Exhibit A. Consumer Price Index means the national "Consumer Price Index-All Urban Consumers" published by the Department of Labor.

**CPI Adjusted LSI Value** – Carryover LSI Value or New LSI Value, as applicable, after adjustment for inflation.

**CPI Adjustment Rate** – Percentage rate that represents the change in inflation over the term of an LSI Contract (or other specified period of time). It is calculated by dividing the Beginning CPI Index by the Ending CPI Index.

**Deferred Maintenance** - Maintenance that was not timely or properly conducted.

**Depreciation** – For LSI Value purposes and as used in this Guide, Depreciation refers to the physical deterioration of LSI Improvements.

**Design Life** - The duration in years of the Useful Life of each real property asset or Component estimated as of the time of construction or manufacture. The estimate assumes that specified maintenance is performed.

**Determined LSI Value** - The value of an LSI Improvement as formally established through the procedures described in the applicable Concession Contract. A Determined LSI Value is not an estimate of LSI Value but a legally binding value determination.

**Ending CPI Index** - CPI Index on the date of contract expiration or date an LSI Improvement ceases to exist.
**Estimated Final LSI Value** – The estimate of LSI Value in LSI Improvements after adjustment for inflation and Depreciation.

**Fixture** - From LSI Contract Exhibit A. Fixtures and non-removable equipment are manufactured items of Personal Property of independent form and utility necessary for the basic functioning of a Structure that are affixed to and considered to be part of the Structure such that title is with the Director as real property, once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) that may be constructed by the concessioner pursuant to the terms of the LSI Contract are considered to be non-removable equipment for Leasehold Surrender Interest purposes only. Except as otherwise indicated in LSI Contract Exhibit A, the term "fixture" includes the term "non-removable equipment."

**Generally Accepted Accounting Principles (GAAP)** - The standard framework of guidelines for financial accounting used in any given jurisdiction. GAAP includes the standards, conventions, and rules accountants follow in recording and summarizing transactions, and in preparing financial statements.

**Leasehold Surrender Interest (LSI)** - From LSI Contract Exhibit A. Leasehold Surrender Interest means a right to payment in accordance with this contract for related Capital Improvements that the Concessioner makes or provides within the area on lands owned by the United States pursuant to the terms and conditions of this contract. The existence of a Leasehold Surrender Interest does not give the Concessioner, or any other person, any right to conduct business in a park area, to utilize the related Capital Improvements, or to prevent the Director or another person from utilizing the related Capital Improvements. The existence of a Leasehold Surrender Interest does not include any interest in the land on which the related Capital Improvements are located.


**LSI Credit Eligible Event (LCEE)** – The construction of a Structure, Major Rehabilitation, or Fixture installation or replacement, that is eligible to be considered as a New LSI Improvement. An LCEE event does not guarantee LSI approval: the activity must comply with all LSI contractual requirements to result in LSI approval and credit.

**LSI Improvement** – The general term for real property improvements in which LSI is recognized under an LSI Contract.

**LSI Value** – The general term referring to the value of an LSI Improvement.

**Major Rehabilitation** - From LSI Contract Exhibit A. Major Rehabilitation means a planned, Comprehensive rehabilitation of an existing Structure that:

1. The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and
2. The Construction Cost of which exceeds fifty percent of the Pre-Rehabilitation Value of the Structure.

**New LSI Improvement** - An LSI Improvement constructed during the term of a current LSI Contract.

**New LSI Value** - The value of a New LSI Improvement upon completion and after approval of its Construction Cost.

**Non-removable Equipment** – See Fixture.
**Personal Property** - Manufactured items of independent form and utility including equipment and objects solely for use by the concessioner to conduct business. Personal Property includes, without limitation, removable equipment, furniture and goods necessary for concessioner operations under the Concession Contract.

**PI Contract** - A Concession Contract awarded under the 1965 Act which provides for Possessory Interest.

**Possessory Interest (PI)** - A compensable interest granted to concessioners under the 1965 Act for capital investments made in real property improvements. Possessory Interest converts to LSI as Carryover LSI Improvements under an LSI Contract.

**Pre-Rehabilitation Value** – Replacement Cost of a Structure less depreciation prior to a Major Rehabilitation.

**Remaining Life** – The remaining serviceable life for a real property asset (including a Component or a Fixture) that represents the number of years the asset is projected to perform its design function or intended purpose. The remaining service life also represents the projected timeframe prior to the replacement of the asset.

**Repair and Maintenance** - The term Repair and Maintenance for LSI purposes refers to all actions taken to repair and maintain the condition of LSI Improvements, except that, Repair and Maintenance for LSI purposes does not include the construction of new Structures, Major Rehabilitations, or the installation or replacement of Fixtures. Accordingly, Repair and Maintenance activities do not result in LSI, no matter how large or expensive.

**Repair and Maintenance Reserve** - A Repair and Maintenance Reserve is a fund established and managed by the concessioner. Its funds are used to carry out, on a project basis in accordance with LSI Contract Exhibits F and H, Repair and Maintenance of Concession Facilities that are non-recurring within a seven-year time frame. See LSI Contract Section 10. Reserve funds may not be used to construct or install LSI Improvements, but may be used for Component Renewal.

**Replacement Cost** - The present cost of replacing an existing Capital Improvement with one of utility equal to the existing Structure, using modern materials and current standards, design and layout.

**Structure** – From Exhibit A to the LSI Contract. A building, dock, or similar edifice affixed to the land so as to be part of the real estate. A Structure may include both constructed infrastructure (e.g., power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a Structure is considered as part of a Structure. Interior furnishings that are not fixtures are not part of a Structure.

**Substantial Completion** – The date the NPS approves a Capital Improvement for use and/or occupancy.

**Trade Fixtures** - For LSI purposes, are Personal Property that is attached to and/or located within real property for business purposes, such as display counters. Trade Fixtures, even though commonly referred to as “fixtures,” often consist of items of Personal Property that do not meet the LSI definition of a Fixture.

**Unadjusted LSI Value** - Carryover LSI Value and/or New LSI Value prior to adjustment for inflation and Depreciation.

**Uniforamat II** - A format developed by the American Society for Testing and Materials (ASTM) to identify the main Components that comprise a typical Structure.
**Unit** – An individual Structure when an LSI Contract involves more than one LSI Improvement.

**Useful Life** - The number of years determined at a particular point in time after a real property asset’s construction or manufacture that the asset can be used for its intended purpose. Useful Life also means the projected timeframe to the replacement of the asset.
**APPENDIX 3: FIXTURE TABLES**

This table is a guide and additional due diligence may be needed to fully determine if a fixture replacement has occurred and if it qualifies for LSI credit.

<table>
<thead>
<tr>
<th>Replacement (This applies to individual replacements only.)</th>
<th>Building Materials (Do not qualify as fixture replacements.)</th>
<th>Personal Property Independent from and function?</th>
<th>Necessary for the basic functioning of the structure?</th>
<th>Affixed to the structure?</th>
<th>Part of the reality once installed?</th>
<th>Fixture replacement?</th>
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<td>Yes</td>
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<td>Affixed to the Structure?</td>
<td>Part of the reality once installed?</td>
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<td>No</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>Security/Alarm System</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
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<td>Serving Window - Pull down</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
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<td>Shelves</td>
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<td>N/A</td>
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<td>Shower</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Siding - Brick, aluminum, vinyl, wood</td>
<td>Yes</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>Sink/Lavatory - Bathroom</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Sink - Kitchen</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
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<td>Smoke Detector – battery</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<td>Smoke Detector - hard wired</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<td>Solar Panels – Primary heating</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<td>Solar Panels – Not primary heating</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
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<td>Solar Tubes for lighting</td>
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<td>Stairs</td>
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<td>Steel Beams</td>
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<td>N/A</td>
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<td>No</td>
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<tr>
<td>Replacement (This applies to individual replacements only.)</td>
<td>Building Materials (Do not qualify as fixture replacements.)</td>
<td>Personal Property Independent form and function?</td>
<td>Necessary for the basic functioning of the structure?</td>
<td>Affixed to the Structure?</td>
<td>Part of the reality once installed?</td>
<td>Fixture replacement?</td>
</tr>
<tr>
<td>------------------------------------------------------------</td>
<td>---------------------------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>--------------------------------------------------</td>
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<td>-------------------------------------</td>
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<td>Stove/Oven</td>
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<td>Yes</td>
<td>No</td>
<td>N/A</td>
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<td>Subfloor</td>
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<td>Telephone - Wiring</td>
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<td>N/A</td>
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<td>Telephone -Handsets</td>
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<td>N/A</td>
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<td>Tents - all canvas</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
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<td>Tents - Canvas over Permanent Wood Frames</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
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<td>No</td>
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<td>Toilet/Water Closet</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Yes</td>
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<td>Towel Dispenser</td>
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<td>Trash Compacter</td>
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<td>Yes</td>
<td>No</td>
<td>N/A</td>
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<td>No</td>
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<td>Vacuum System- Built in</td>
<td>No</td>
<td>No</td>
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<td>Vending Machines</td>
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<td>Yes</td>
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<td>Wall Beds</td>
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<td>No</td>
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<td>Wallboard</td>
<td>Yes</td>
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<td>N/A</td>
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<tr>
<td>Wallpaper</td>
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<td>N/A</td>
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<tr>
<td>Water Pipes</td>
<td>Yes</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>Water Softener</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>Window Blinds</td>
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<td>Yes</td>
<td>No</td>
<td>N/A</td>
<td>N/A</td>
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<td>Window Frames</td>
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<td>N/A</td>
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<td>N/A</td>
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<tr>
<td>Windows Screens</td>
<td>Yes</td>
<td>N/A</td>
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<td>N/A</td>
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<tr>
<td>Flooring</td>
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<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>No</td>
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</tbody>
</table>
APPENDIX 6: LSI CREDIT ELIGIBLE EVENT (LCEE) PROCESS

- Does the concessioner have a Cat I contract awarded under the 1998 Act?
  - No
  - Yes

- Did the concessioner provide the funding?
  - No
  - Yes

- Were Repair and Maintenance Reserve funds used?
  - No
  - Yes

- Is it construction of a Capital Improvement?
  - No
  - Yes

LSI Eligible Event (LCEE)

Go to Fixture Decision Tree

Not an LSI Eligible Event (LCEE)
APPENDIX 7: FIXTURE DECISION PROCESS

- Are building materials being replaced?
  - No
  - Yes: Does the replacement possess independent form and function?
    - No
    - Yes: Is the replacement necessary for the basic functioning of the structure?
      - No
      - Yes: Is the replacement permanently affixed?
        - No
        - Yes: Is the replacement part of the realty once installed (title to Director)?
          - No
          - Yes: Replacement qualifies as a fixture. Additional contractual requirements must be met before final LSI determination can be made.

No LSI Credit: Replacement does not qualify as a fixture (or non-removable equipment).
WHERE TO GET HELP

Inquiries for help should be directed to the Regional Concessions Office. Should additional support be required, subsequent inquiries should be directed to:

NPS Commercial Services Program
Asset Management Branch
Email: CS_AM_Helpdesk@nps.gov
Exhibit A to
NPS Concession Contracts

(Leasehold Surrender Interest)
EXHIBIT A

LEASEHOLD SURRENDER INTEREST

This Exhibit A to this Contract establishes certain terms and conditions of the Contract regarding the nature, scope and applicable conditions of leasehold surrender interest. In event of any inconsistency between this Exhibit A and Exhibit F1 of this Contract this Exhibit A shall prevail.

SEC. 1. DEFINITIONS

(a) “Arbitration” means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this Exhibit A will utilize the following procedures unless otherwise agreed by the Concessioner and the Director. One member of the arbitration panel will be selected by the Concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the Concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Determinations must be made by a majority of the members of the panel and will be binding on the Concessioner and the Director.

(b) A “capital improvement” is a structure, fixture, or non-removable equipment provided by the Concessioner pursuant to the terms of this Contract and located on lands of the United States within the area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this Exhibit A.

(c) “Construction cost” of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the concessioner in accordance with Generally Accepted Accounting Principles (GAAP).

(d) “Consumer Price Index” means the national “Consumer Price Index--All Urban Consumers” published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

(e) “Depreciation” means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

(f) “Eligible direct costs” means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor's (and subcontractor's) profit and overhead (including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).

(g) “Eligible indirect costs” means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service
charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the Concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the Concessioner are not eligible indirect costs.

(h) “Fixtures and non-removable equipment” are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) that may be constructed by the Concessioner pursuant to the terms of this Contract are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in Exhibit A, the term “fixture” includes the term “non-removable equipment.”

(i) “Leasehold surrender interest” solely means a right to payment in accordance with this Contract for related capital improvements that the Concessioner makes or provides within the area on lands owned by the United States pursuant to the terms and conditions of this Contract. The existence of a leasehold surrender interest does not give the Concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

(j) “Leasehold surrender interest value” means the amount of compensation the Concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this Contract. The leasehold surrender interest value in existing capital improvements under the terms of this Contract is an amount equal to:

1. The initial construction cost of the related capital improvement;

2. Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;

3. Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of this Contract, or, if applicable, the date on which the Concessioner ceases to utilize a related capital improvement (e.g., where the related capital improvement is taken out of service by the Director pursuant to the terms of this Contract).

(k) “Major rehabilitation” means a planned, comprehensive rehabilitation of an existing structure that:

1. The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

2. The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

(l) “Pre-rehabilitation value” of an existing structure means the replacement cost of the structure less depreciation.

(m) “Real property improvements” means real property other than land itself, including, but not limited to, capital improvements.
“Related capital improvement” or “related fixture” means a capital improvement in which the
Concessioner has a leasehold surrender interest.

“Replacement cost” means the estimated cost to reconstruct, at current prices, an existing structure with
utility equivalent to the existing structure, using modern materials and current standards, design and layout.

“Structure” means a building, dock, or similar edifice affixed to the land so as to be part of the real
estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and
constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking
areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct
support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a
structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a
structure.

“Substantial completion” means the condition of a capital improvement, related capital improvement,
major rehabilitation, or new structure construction project when the project is substantially complete and
ready for use and/or occupancy.

SEC. 2. OBTAINING A LEASEHOLD SURRENDER INTEREST

The Concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance
with the terms and conditions of this Contract, including, without limitation, the terms and conditions of this
Exhibit A to the Contract.

SEC. 3. AUTHORIZING THE CONSTRUCTION OF A CAPITAL IMPROVEMENT

The Director may only authorize or require the Concessioner to construct capital improvements on area lands
in accordance with the terms and conditions of this Contract and for the conduct by the Concessioner of
visitor services, including, without limitation, the construction of capital improvements necessary for the
conduct of visitor services.

SEC. 4. REQUIREMENTS FOR BEGINNING TO CONSTRUCT A CAPITAL IMPROVEMENT

Before beginning to construct any capital improvement, the Concessioner must obtain written approval from
the Director in accordance with the terms of this Contract, including the terms and conditions of this Exhibit
A and Exhibit F1. The request for approval must include appropriate plans and specifications for the capital
improvement and any other information that the Director may specify. The request must also include an
estimate of the total construction cost of the capital improvement. The estimate of the total construction cost
must specify all elements of the cost in such detail as is necessary to permit the Director to determine that
they are elements of construction cost as defined in this Exhibit. (The approval requirements of this and other
sections of this Contract also apply to any change orders to a capital improvement project and to any
additions to a structure or replacement of fixtures as described in this Contract.)

SEC. 5. REQUIREMENTS AFTER SUBSTANTIAL COMPLETION OF A CAPITAL IMPROVEMENT

Upon substantial completion of the construction of a capital improvement in which the Concessioner is to
obtain a leasehold surrender interest, the Concessioner must provide the Director a detailed construction
report in accordance with the terms and conditions of this Contract, including without limitation Exhibit A
and Exhibit F1. The construction report must be supported by actual invoices of the capital improvement’s
construction cost together with, if requested by the Director, a written certification from a certified public
accountant. The construction report must document, and any requested certification by the certified public
accountant must certify, that all components of the construction cost were incurred and capitalized by the
Concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction
costs as defined in this Exhibit. Invoices for additional construction costs of elements of the project that were
not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project’s construction cost.

SEC. 6. DETERMINING CONSTRUCTION COST FOR PURPOSES OF LEASEHOLD SURRENDER INTEREST VALUE

After receiving the detailed construction report (and certification, if requested), from the Concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this Exhibit A. The construction cost determined by the Director will be the final determination of construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the Concessioner requests arbitration of the construction cost under Section 7 of this Exhibit A. The Director may at any time review a construction cost determination (subject to arbitration under Section 7 of this Exhibit A) if the Director has reason to believe that it was based on false, misleading or incomplete information.

SEC. 7. ARBITRATING THE CONSTRUCTION COST OF A CAPITAL IMPROVEMENT

If the Concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under Section 6 of this Exhibit A. The arbitration procedures are described in Section 1 of this Exhibit A. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

SEC. 8. ACTIONS THE CONCESSIONER MAY OR MUST TAKE REGARDING LEASEHOLD SURRENDER INTEREST

The Concessioner:

(a) May encumber a leasehold surrender interest in accordance with the terms of this Contract;

(b) Where applicable, must transfer its leasehold surrender interest in connection with any assignment, termination or expiration of this Contract; and

(c) May waive or relinquish a leasehold surrender interest.

SEC. 9. EXTINGUISHMENT OF A LEASEHOLD SURRENDER INTEREST

(a) A leasehold surrender interest may not be extinguished by the expiration or termination of this Contract and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to the terms of this Contract will constitute the payment of just compensation for leasehold surrender interest within the meaning of this Contract and for all other purposes.

(b) The Director at any time during the term of this Contract or after its termination or expiration may in his discretion pay the Concessioner the then applicable Leasehold Surrender Interest Value in all or portions of the related capital improvements in which the Concessioner holds a Leasehold Surrender Interest under the terms of this Contract. Upon receipt of such payment by the Concessioner, the applicable Leasehold Surrender Interest shall be extinguished or reduced, as applicable, for all purposes of this Contract and Applicable Laws. In the event of a dispute between the Director and the Concessioner as to the appropriate amount of such payment under the terms of this Contract, the dispute shall be resolved through binding arbitration as defined above.

SEC. 10. LEASEHOLD SURRENDER INTEREST UNDER A NEW CONCESSION CONTRACT

APPENDIX  Page A-132
If the Concessioner under this Contract is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the Concessioner’s leasehold surrender interest value (established as of the date of expiration or termination of this Contract) in the related capital improvements will be continued as the initial value of the Concessioner’s leasehold surrender interest under the terms of the new concession contract.

SEC. 11. PAYMENT FOR LEASEHOLD SURRENDER INTEREST IF THE CONCESSIONER IS NOT AWARDED A NEW CONCESSION CONTRACT

(a) If the Concessioner is not awarded a new concession contract after expiration or termination of this Contract, or the Concessioner, prior to such termination or expiration, ceases to utilize under the terms of this Contract capital improvements in which the Concessioner has a leasehold surrender interest, the Concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director’s control, will be the date of expiration or termination of this Contract or the date the Concessioner ceases to utilize related capital improvements under the terms of this Contract. Depreciation of the related capital improvements will be established as of the date of expiration or termination of this Contract, or, if applicable, the date the Concessioner ceases to utilize the capital improvements under the terms this Contract.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of this Contract, or, as of the date the Concessioner ceases to utilize related capital improvements under the terms of this Contract, the payment when made will include interest on the amount that was due on the date of expiration or termination of this Contract or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of this Contract or the cessation of use of related capital improvements under the terms this Contract.

SEC. 12. PROCESS FOR DETERMINING LEASEHOLD SURRENDER INTEREST VALUE

In the event that the Concessioner and the Director cannot reach agreement as to a leasehold surrender interest value where required by the terms of this Contract, the Director will make a final determination of leasehold surrender interest value unless binding arbitration as to the value is requested by the Concessioner. The arbitration procedures are described in Section 1. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this Exhibit A is final and not subject to further arbitration.

SEC. 13. PAYMENT OF LEASEHOLD SURRENDER INTEREST BY A NEW CONCESSIONER

A new concession contract awarded to a new concessioner will require the new concessioner to pay the Concessioner its leasehold surrender interest value in existing capital improvements as determined under Section 12.

SEC. 14. OBTAINING ADDITIONAL LEASEHOLD SURRENDER INTEREST BY UNDERTAKING A MAJOR REHABILITATION OR ADDING TO A STRUCTURE IN WHICH THE CONCESSIONER HAS A LEASEHOLD SURRENDER INTEREST

If the Concessioner, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the Concessioner has a leasehold surrender interest, the Concessioner will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the
major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this Contract.

SEC. 15. OBTAINING ADDITIONAL LEASEHOLD SURRENDER INTEREST BY REPLACING A FIXTURE IN WHICH THE CONCESSIONER HAS A LEASEHOLD SURRENDER INTEREST

If the Concessioner replaces an existing fixture in which the Concessioner has a leasehold surrender interest with a new fixture, the Concessioner will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

SEC. 16. OBTAINING A LEASEHOLD SURRENDER INTEREST IN EXISTING REAL PROPERTY IMPROVEMENTS IN WHICH NO LEASEHOLD SURRENDER INTEREST EXISTS

(a) If the main body of this Contract requires the Concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the Concessioner), a leasehold surrender interest will be obtained by the Concessioner in such replacement fixtures subject to the approval and determination of construction cost and other conditions contained in Contract.

(b) If the main body of this Contract requires the Concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (e.g., a government-constructed facility assigned to the Concessioner), upon substantial completion of the major rehabilitation, the Concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

SEC. 17. NO LEASEHOLD SURRENDER INTEREST RESULTS FROM REPAIR AND MAINTENANCE OF REAL PROPERTY IMPROVEMENTS

The Concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.
NPS Standard
Concession Contract
DRAFT

CATEGORY I CONTRACT

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

Big Bend National Park

Lodging, Food and Beverage, Retail, RV Park, Fuel and Other Services

CONCESSION CONTRACT NO. CC-BIBE002-19

[Name of Concessioner]

[Concessioner’s address, email address, phone number]

Doing Business as [Trade name]

Covering the Period July 1, 2019 through June 30, 2029

\(^1\) The effective date of the Contract is subject to change prior to contract award if determined necessary by the Service due to transfer timing issues. The expiration date will be changed to continue the same term length from any effective date. This footnote is to be deleted prior to contract execution.
**CONCESSION CONTRACT**

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IDENTIFICATION OF THE PARTIES

[CORPORATION]

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, (hereinafter referred to as the “Director”), and [Concessioner Name], a Corporation organized and existing under the laws of the State of [state name], (hereinafter referred to as the “Concessioner”):

[PARTNERSHIP]

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, (hereinafter referred to as the “Director”), and [Concessioner Name], a partnership organized under the laws of the State of [state name], (hereinafter referred to as the “Concessioner”):

[SOLE PROPRIETORSHIP]

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, (hereinafter referred to as the “Director”), and [Concessioner Name], an individual of, doing business as [Trade name], (hereinafter referred to as the “Concessioner”):

[LIMITED LIABILITY COMPANY]

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, (hereinafter referred to as the “Director”), and [Concessioner Name], a Limited Liability Company organized and existing under the laws of the State of [state name], (hereinafter referred to as the “Concessioner”):

WITNESSETH:

THAT WHEREAS, Big Bend National Park is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

WHEREAS, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

WHEREAS, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

WHEREAS, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (54 U.S.C. §§100101 et seq.), and November 13, 1998 (Pub. L. 105-391 54 U.S.C. §§ 101911 et seq.), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:
SEC. 1. TERM OF CONTRACT

This Concession Contract No. CC-BIBE002-19 ("Contract") shall be effective as of July 1, 2019, and shall be for the term of ten (10) years until its expiration on June 30, 2029 if the Concessioner satisfactorily completes the Concession Facilities Improvement Program described in Section 9(d) of this Contract. If the Concessioner fails to complete this program to the satisfaction of the Director within the time specified, then this Contract shall be for the term of four (4) years until its expiration on June 30, 2023. The Director may extend this shortened term (but not beyond the original date of expiration of this Contract) in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

SEC. 2. DEFINITIONS

The following terms used in this Contract will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) “Applicable Laws” means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) “Area” means the property within the boundaries of Big Bend National Park.

(c) “Best Management Practices” or “BMPs” are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Contract. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner’s operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

(d) “Capital Improvement” shall have the meaning set forth in Exhibit A to this Contract.

(e) “Concession Facilities” shall mean all Area lands assigned to the Concessioner under this Contract and all real property improvements assigned to or constructed by the Concessioner under this Contract. The United States retains title and ownership to all Concession Facilities.

(f) “Days” shall mean calendar days.

(g) “Director” means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.

(h) “Exhibit” or “Exhibits” shall mean the various exhibits, which are attached to this Contract, each of which is hereby a part of this Contract.

(i) “Gross receipts” means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this Contract, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

(1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);

(2) Charges for employees’ meals, lodgings, and transportation;
(3) Cash discounts on purchases;

(4) Cash discounts on sales;

(5) Returned sales and allowances;

(6) Interest on money loaned or in bank accounts;

(7) Income from investments;

(8) Income from subsidiary companies outside of the Area;

(9) Sale of property other than that purchased in the regular course of business for the purpose of resale;

(10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies; and

(11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(j) “Gross receipts of subconcessioners” means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(k) “Leasehold Surrender Interest” shall have the meaning set forth in Exhibit A to this Contract.

(l) “Leasehold Surrender Interest Value” or the “value” of a Leasehold Surrender Interest shall have the meaning set forth in Exhibit A to this Contract.

(m) “Major Rehabilitation” shall have the meaning set forth in Exhibit A to this Contract.

(n) “Possessory Interest” shall have the meaning set forth in Exhibit A to this Contract.

(o) “Real Property Improvements” shall have the meaning set forth in Exhibit A to this Contract.

(p) “Subconcessioner” means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(q) “Superintendent” means the manager of the Area.

(r) “Visitor services” means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by section 3(a) of this Contract.
SEC. 3. SERVICES AND OPERATIONS

(a) Required and Authorized Visitor Services

During the term of this Contract, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) Required Visitor Services. The Concessioner is required to provide the following visitor services during the term of this Contract:

<table>
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<tr>
<th>Service</th>
<th>Location</th>
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<tbody>
<tr>
<td>i. Lodging</td>
<td>Chisos Basin</td>
</tr>
<tr>
<td>ii. Food and Beverage</td>
<td>Chisos Basin and Panther Junction</td>
</tr>
<tr>
<td>iii. Retail</td>
<td>Chisos Basin, Castolon, Panther Junction, and Rio Grande Village</td>
</tr>
<tr>
<td>iv. Fuel Service Station</td>
<td>Panther Junction and Rio Grande Village</td>
</tr>
<tr>
<td>v. Recreational Vehicle Park</td>
<td>Rio Grande Village</td>
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<td>vi. Public Laundry</td>
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<td>vii. Public Showers</td>
<td>Rio Grande Village</td>
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(2) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following visitor services during the term of this Contract:

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<tr>
<th>Service</th>
<th>Location</th>
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<tbody>
<tr>
<td>i. Transportation</td>
<td>Sites within the Area as approved by the Service</td>
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(b) Operation and Quality of Operation

(1) The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this Contract to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this Contract. The Concessioner's authority to provide visitor services under the terms of this Contract is non-exclusive.

(2) The Concessioner shall provide housing and on-site food services for the employees.

(c) Operating Plan

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan.
(including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this Contract as Exhibit B. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this Contract and are not inconsistent with the terms and conditions of the main body of this Contract.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this Contract, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this Contract must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area’s resources or the Area’s geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this Contract. The Concessioner’s rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit C.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Contract. However, the Director reserves the right to review and modify the Concessioner’s complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

SEC. 4. CONCESSIONER PERSONNEL

(a) Employees

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this Contract.
(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit C.

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(6) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(7) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(8) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner’s policy of maintaining a drug-free environment both in the workplace and in the Area.

(9) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(b) Employee Housing and Recreation

(1) If the Concessioner is required to provide employee housing under this Contract, the Concessioner’s charges to its employees for this housing must be reasonable.

(2) If the visitor services required and/or authorized under this Contract are located in a remote or isolated area, the Concessioner shall provide appropriate employee recreational activities.

SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE

(a) Legal, Regulatory and Policy Compliance

This Contract, operations thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this Contract at the Concessioner’s sole cost and expense. Certain Applicable Laws
governing protection of the environment are further described in this Contract. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this Contract.

(b) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where to Send Notice

All notices required by this Contract shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Big Bend National Park
P.O. Box 129
Big Bend National Park, TX 79834

Notices sent to the Concessioner shall be sent to the following address:

[Concessioner name]
[Address]
[Attention:]

SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION

(a) Environmental Management Objectives

The Concessioner shall meet the following environmental management objectives (hereinafter “Environmental Management Objectives”) in the conduct of its operations under this Contract:

(1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this Contract.

(b) Environmental Management Program

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this Contract. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this Contract.

(3) The EMP shall include, without limitation, the following elements:
(i) Policy. The EMP shall provide a clear statement of the Concessioner’s commitment to the Environmental Management Objectives.

(ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e., measurable results and schedules) to achieve these goals.

(iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

(iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this Contract.

(vii) Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner’s organization.

(viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner’s conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

(c) Environmental Performance Measurement

The Concessioner shall be evaluated by the Director on its environmental performance under this Contract, including, without limitation, compliance with the approved EMP, on at least an annual basis.

(d) Environmental Data, Reports, Notifications, and Approvals

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this Contract. The Concessioner shall obtain the Director’s approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this Contract. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this Contract. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.
(2) Reports. The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) Notification of Releases. The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area (whether solid, semi-solid, liquid or gaseous in nature), of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) Notice of Violation. The Concessioner shall give the Director in writing immediate notice of any threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) Communication with Regulatory Agencies. The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this Contract. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

(e) Corrective Action

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner’s operations under this Contract, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(f) Indemnification and Cost Recovery for Concessioner Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with section 12 of this Contract from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts’ fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this Contract.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.
(g) Weed and Pest Management

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this Contract. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

(h) Protection of Cultural and Archeological Resources.

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner’s employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

SEC. 7. INTERPRETATION OF AREA RESOURCES

(a) Concessioner Obligations

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this Contract.

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

(b) Director Review of Content

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER

(a) Assignment of Concession Facilities

(1) The Director hereby assigns the following Concession Facilities to the Concessioner for the purposes of this Contract:

(i) certain parcels of Area land as described in Exhibit D upon which, among other matters, the Concessioner may be authorized to construct real property; and

(ii) certain real property improvements described in Exhibit D in existence as of the effective date of this Contract, as may be modified from time to time to include additional real property improvements completed in accordance with the terms and conditions of this Contract.

(2) The Director shall from time to time amend Exhibit D to reflect changes in Concession Facilities assigned to the Concessioner, including, without limitation, amending Exhibit D to reflect the addition of real property...
improvements completed in accordance with the terms and conditions of this Contract and to reflect the withdrawal of concession facilities as set forth below.

(b) Concession Facilities Withdrawals

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this Contract if:

(1) The withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;

(2) The operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) Land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

(c) Effect of Withdrawal

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this Contract will be treated as a termination of this Contract pursuant to Section 16. The Concessioner will be compensated pursuant to Section 17 for the value of any Leasehold Surrender Interest it may have, if any, in permanently withdrawn Concession Facilities. No other compensation is due the Concessioner in these circumstances.

(d) Right of Entry

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this Contract for any purpose he may deem necessary for the administration of the Area.

(e) Personal Property

(1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this Contract, unless such personal property is provided by the Director as set forth in subsection (e)(2).

The Concessioner must provide the following Personal Property improvements in conjunction with the Concession Facilities Improvement Program described in Section 9(d):

<table>
<thead>
<tr>
<th>Project</th>
<th>Estimated Start Date</th>
<th>Estimated End Date</th>
<th>Estimated Personal Property Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emory Peak Room Improvements</td>
<td>2019</td>
<td>2020</td>
<td>$6,000</td>
</tr>
<tr>
<td>Pay-at-Pump Fuel Dispensers</td>
<td>2019</td>
<td>2020</td>
<td>$199,500</td>
</tr>
<tr>
<td>Rio Grande Room Improvements and Renovations</td>
<td>2020</td>
<td>2021</td>
<td>$202,400</td>
</tr>
<tr>
<td>Casa Grande Room Improvements and Renovations</td>
<td>2020</td>
<td>2021</td>
<td>$384,600</td>
</tr>
<tr>
<td>Quick Service Food and Beverage in the Lodge</td>
<td>2020</td>
<td>2021</td>
<td>$25,000</td>
</tr>
<tr>
<td>Quick Service Food and Beverage in Panther Junction store</td>
<td>2020</td>
<td>2021</td>
<td>$25,000</td>
</tr>
<tr>
<td>Backup Generators</td>
<td>2020</td>
<td>2021</td>
<td>$87,200</td>
</tr>
<tr>
<td>Construct Employee Housing</td>
<td>2020</td>
<td>2021</td>
<td>$81,900</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$1,011,600</td>
</tr>
</tbody>
</table>
(2) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner’s use in the performance of this Contract. The Director hereby assigns government personal property listed in Exhibit E to the Concessioner as of the effective date of this Contract. Exhibit E will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition, as appropriate. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(3) Personal Property Reserve

(i) The Concessioner shall establish and manage a Personal Property Reserve. The Concessioner shall use the funds in this Reserve to carry out the replacement, rehabilitation, and routine repair of the Personal Property used in the operation as documented in the Concessioner’s Personal Property Report (as defined in Exhibit H Maintenance Plan).

(ii) The Concessioner shall establish within its accounting system a Personal Property Reserve. The Concessioner shall debit to this Reserve, within fifteen (15) days after the last day of each month that the Concessioner operates, a sum equal to one percent (1%) of the Concessioner’s gross receipts for the previous month. If the Concessioner fails to make timely debits to the Personal Property Reserve, the Director may terminate this Contract for default or may require the Concessioner to post a bond in an amount equal to the estimated annual Personal Property Reserve allocation, based on the preceding year’s gross receipts.

(iii) The balance in the Personal Property Reserve shall be available for projects in accordance with the Reserve’s purpose. For all expenditures made for each project from the Personal Property Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Director. Failure to expend Personal Property Reserve funds when directed by the Director shall be considered as a material breach of this Contract for which the Director may seek monetary damages and other legal relief, including, without limitation, termination of this Contract.

(iv) Any balance in the Personal Property Reserve not duly expended by the Concessioner as of the termination or expiration of this Contract shall be remitted by the Concessioner to the Director as a franchise fee or other monetary consideration due to the Director under this Contract in accordance with 54 U.S.C. § 101917 within fifteen (15) days of such termination or expiration.

(f) Condition of Concession Facilities

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, “as is.”

(g) Utilities Provided by the Director

The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

(h) Utilities Not Provided by the Director

If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area or shall install the utilities within the Area with the written permission of the Director, subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Area or other federal lands must be acquired at the Concessioner’s expense in accordance with applicable State procedures and law.
Upon expiration or termination of this Contract for any reason, the Concessioner must assign these water rights to the United States without compensation, and these water rights will become the property of the United States;

(2) If requested by the Director, the Concessioner must provide to the Director any utility service provided by the Concessioner under this section to such extent as will not unreasonably restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and the Director in writing, the rate per unit charged the Director for such service shall be approximately the average cost per unit of providing such service; and

(3) All appliances and machinery to be used in connection with the privileges granted in this subsection, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Director.

SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS

(a) Construction of Real Property Improvements

The Concessioner may construct or install upon lands assigned to the Concessioner under this Contract only those real property improvements that are determined by the Director to be necessary and appropriate for the conduct by the Concessioner of the visitor services required and/or authorized under this Contract. Construction or installation of real property improvements may occur only after the written approval by the Director of their location, plans, and specifications. The form and content of the application and the procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit F1. All real property improvements constructed or installed by the Concessioner will immediately become the property of the United States and be considered Concession Facilities.

(b) Removal of Real Property Improvements

(1) The Concessioner may not remove, dismantle, or demolish real property improvements in the Area without the prior approval of the Director.

(2) Any salvage resulting from the authorized removal, severance or demolition of a real property improvement within the Area shall be the property of the United States.

(3) In the event that an assigned real property improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

(c) Leasehold Surrender Interest

(1) This Contract hereby provides the Concessioner, subject to all applicable definitions, requirements and limitations of this Contract and Exhibit A, a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this Contract, including, but not limited to, those Capital Improvements constructed as part of the Concession Facilities Improvement Program and those Capital Improvements which result from the Major Rehabilitation of an existing real property improvement. Upon completion of a Major Rehabilitation by the Concessioner, an existing real property improvement assigned to the Concessioner in which the Concessioner had no Leasehold Surrender Interest prior to the Major Rehabilitation shall be considered as a Capital Improvement for all purposes of this Contract.

(2) This Contract may provide the Concessioner a Leasehold Surrender Interest in real property improvements resulting from possessory interest obtained under the terms of a possessory interest concession contract. Exhibit G describes the real property improvements, if any, in which the Concessioner has such a Leasehold Interest.
Surrender Interest and states the value of this Leasehold Surrender Interest as of the effective date of this Contract.

(3) The Concessioner shall not obtain Leasehold Surrender Interest under this Contract except as may be provided in Exhibit A and Exhibit F1. Among other matters, no Leasehold Surrender Interest shall be obtained as a result of expenditures from the Component Renewal Reserve described in this Contract, and this Contract does not provide a Leasehold Surrender Interest as a result of expenditures for repair and maintenance of Concession Facilities of any nature.

(d) Concession Facilities Improvement Program

(1) The Concessioner shall undertake and complete an improvement program (hereinafter “Concession Facilities Improvement Program”) costing not less than $3,390,000 and not more than $4,140,000 as adjusted for each project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Labor's CPI-U Index, as published by the Department of Labor.

(2) The Concession Facilities Improvement Program shall include:

<table>
<thead>
<tr>
<th>Project</th>
<th>Estimated Start Date</th>
<th>Estimated End Date</th>
<th>Estimated Real Property Cost (Section 9(d))</th>
<th>Estimated Personal Property Cost (Section 8(e))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emory Peak Room Improvements</td>
<td>2019</td>
<td>2020</td>
<td>$0</td>
<td>$6,000</td>
</tr>
<tr>
<td>Upgrade Fuel Dispensers</td>
<td>2019</td>
<td>2020</td>
<td>$0</td>
<td>$199,500</td>
</tr>
<tr>
<td>Rio Grande Room Improvements and Renovations (20 rooms)</td>
<td>2020</td>
<td>2021</td>
<td>$213,500</td>
<td>$202,400</td>
</tr>
<tr>
<td>Casa Grande Room Improvements and Renovations (38 rooms)</td>
<td>2020</td>
<td>2021</td>
<td>$405,600</td>
<td>$384,600</td>
</tr>
<tr>
<td>Casa Grande Exterior Upgrades</td>
<td>2020</td>
<td>2021</td>
<td>$479,000</td>
<td>$0</td>
</tr>
<tr>
<td>Quick Service Food and Beverage in the Lodge</td>
<td>2020</td>
<td>2021</td>
<td>$143,700</td>
<td>$25,000</td>
</tr>
<tr>
<td>Quick Service Food and Beverage in Panther Junction store</td>
<td>2020</td>
<td>2021</td>
<td>$76,500</td>
<td>$25,000</td>
</tr>
<tr>
<td>Backup Generators</td>
<td>2020</td>
<td>2021</td>
<td>$208,800</td>
<td>$87,200</td>
</tr>
<tr>
<td>Construct Employee Housing</td>
<td>2020</td>
<td>2021</td>
<td>$2,236,800</td>
<td>$81,900</td>
</tr>
<tr>
<td><strong>Total CFIP Investment Requirement</strong></td>
<td></td>
<td></td>
<td><strong>$3,763,900</strong></td>
<td><strong>$1,011,600</strong></td>
</tr>
</tbody>
</table>

(a) **Emory Peak Room Improvements.** The Concessioner must make upgrades to the amenities package to the eight Emory Peak rooms in the first year of the Contract to offer an opportunity for a higher-end experience for guests. The Service’s estimate includes items such as speaker/alarm clock units with USB connections for mobile devices, upgraded bed linens, bathrobes, bottled water, and daily snack items.

(b) **Upgrade Fuel Dispensers.** The Concessioner must upgrade the existing fuel dispensers to meet modern standards, and accept payment and provide service any time of day. Currently, there are three, two-sided fuel dispensers at Panther Junction and two, single-side dispensers at Rio Grande Village. In the first year of the Contract, the Concessioner must replace the card-reader equipment in each side of the three fuel dispensers and install a new point of sale system at Panther Junction. Additionally, at Rio Grande Village, the Concessioner must replace the two fuel dispensers entirely and install a new point of sale system within the first year of the Contract.

(c) **Rio Grande and Casa Grande Room Improvements and Renovations.** The Rio Grande Rooms and Casa Grande Rooms make up the bulk of the room inventory, with a total of 20 and 38 rooms, respectively.
The Concessioner must replace each room’s flooring, wall-coverings, and bathroom and provide new fixtures, furniture, soft goods, and amenities during the second year of the Contract.

(d) **Casa Grande Exterior Upgrades.** The Concessioner must replace and upgrade the Casa Grande wood decking, railings, and stairs during the second year of the Contract. The Service estimate includes an upgrade from wood to metal railing.

(e) **Quick Service Food and Beverage in the Lodge.** The Concessioner must transform the current employee dining room into a Quick Service food and beverage outlet and adapt the restrooms in this location for public use, rather than the current “employee only” status. The Concessioner must move the employee dining room to a nearby room currently used for storage. As an alternative to the sit-down meal style of the restaurant, the Service intends for the Concessioner to install service counters and grab-and-go food displays, and serve freshly made or quickly assembled breakfast, lunch, and dinner items, such as burritos, sandwiches, coffee drinks, salads, soups, or pizzas. The Concessioner must complete this project during the second year of the Contract.

(f) **Panther Junction Service Station.** The Concessioner must repurpose a space within the existing Panther Junction store currently used as retail or storage, such as the former automobile service bay, into a Quick Service food and beverage outlet. The Concessioner must complete this project during the second year of the Contract.

(g) **Backup Generators.** The Concessioner must install four propane-powered electrical generators to provide minimal services as follows: at Chisos Basin, the Concessioner must install a generator adjacent to the Lodge to power the entire Lodge building, a generator behind the Camper Store to power the refrigerators and freezers, and a generator in the Concessioner’s maintenance area, near the Lodge, to power pathway lights. Additionally, the Concessioner must install a generator at the Panther Junction Service Station to power the fuel pumps and dispensers. Associated with these generators, the Concessioner must install cement pads, propane tanks, and additional conduit and compatible wiring. The Concessioner must determine the optimal generator size and quality that would be required to power the systems described above, assure minimal noise and emissions production, and make associated upgrades to the relevant electrical systems. The Concessioner must complete this project by the end of the second year of the Contract. The Service estimates on the project include one 60 kilowatt (kW) generator, two 20 kW generators, one 11 kW generator, and related upgrades.

(h) **Construct Employee Housing.** This project will be to construct three housing buildings: one four-plex (4,305 square feet) and two dormitories (2,124 square feet, each). The Service’s vision for this project is to pattern the construction of the three proposed residences after three recently constructed (2011) concessioner residences located on Paisano Place at Panther Junction. The Concessioner must move the personal property trailers currently located on the construction site to a temporary location in the same area until the new buildings are ready for use. The Concessioner must complete this project by the end of the second year of the Contract.

(3) The Concessioner must commence construction under the Concession Facilities Improvement Program on July 1, 2019 in a manner that demonstrates to the satisfaction of the Director that the Concessioner is in good faith carrying the Concession Facilities Improvement Program forward reasonably under the circumstances. No construction may begin until the Concessioner receives written approval from the Director of plans and specifications in accordance with Exhibit F1. During the period of construction, the Concessioner shall provide the Director with such evidence or documentation, as may be satisfactory to the Director, to demonstrate that the Concession Facilities Improvement Program duly is being carried forward.

(4) The Concessioner shall complete and have the real property improvements available for public use on or before July 1, 2021. The Director may extend this date in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.
SEC. 10. MAINTENANCE

(a) Maintenance Obligation

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director. To assist in the fulfillment of this obligation, the Concessioner agrees to expend annually not less than one and eight-tenths percent (1.8%) of the Concessioner’s annual gross receipts (as defined in Sec. 2(i) hereof) on all maintenance activities and maintenance payroll not covered by the Component Renewal Reserve described in Sec. 10 (c) or the Personal Property Reserve described in Sec. (8)(e). Furthermore, as this Repair and Maintenance Expense amount is a minimum, the Concessioner may be required to expend additional amounts above this minimum to ensure the Concession Facilities are maintained to the satisfaction of the Director.

(b) Maintenance Plan

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit H. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this Contract and shall not be inconsistent with the terms and conditions of the main body of this Contract.

(c) Component Renewal Reserve

(1) The Concessioner shall establish and manage a Component Renewal Reserve. The funds in this Reserve shall be used to carry out, on a project basis in accordance with Exhibits F2 and H, component renewal of Concession Facilities that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. Projects will be carried out by the Concessioner as the Director shall direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Director. No projects may be commenced until the Concessioner receives written approval from the Director.

(2) Projects paid for with funds from the Component Renewal Reserve will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Concession Facilities or housekeeping and groundskeeping responsibilities as required by this Contract from Concessioner funds exclusive of the funds contained in the Component Renewal Reserve.

(3) The Concessioner shall establish within its accounting system a Component Renewal Reserve. The Concessioner shall debit to this Reserve, within fifteen (15) days after the last day of each month that the Concessioner operates a sum equal to: three and two-tenths percent (3.2%) of the Concessioner’s gross receipts for the previous month. If the Concessioner fails to make timely debits to the Component Renewal Reserve, the Director may terminate this Contract for default or may require the Concessioner to post a bond in an amount equal to the estimated annual Component Renewal Reserve allocation, based on the preceding year’s gross receipts.

(4) The balance in the Component Renewal Reserve shall be available for projects in accordance with the Reserve’s purpose. For all expenditures made for each project from the Component Renewal Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Director. Failure to expend Component Renewal Reserve Funds when directed by the Director shall be considered as a material breach of this Contract for which the Director may seek monetary damages and other legal relief, including, without limitation, termination of this Contract.
(5) Component Renewal Reserve funds shall not be used to construct “Capital Improvements” as that term is defined in 36 CFR Part 51, i.e., the construction of a “structure”, a “major rehabilitation”, or the installation or replacement of “fixtures and non-removable equipment” (as these terms are defined in 36 CFR Part 51). The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Component Renewal Reserve funds.

(6) Any balance in the Component Renewal Reserve not duly expended by the Concessioner as of the termination or expiration of this Contract shall be remitted by the Concessioner to the Director as a franchise fee or other monetary consideration due to the Director under this Contract in accordance with 54 U.S.C. §101917 within fifteen (15) days after such termination or expiration. Interest on delayed payment shall be due in accordance with section 11(c) of this Contract. If any Component Renewal Reserve funds have been obligated by the Concessioner but not expended as of the termination or expiration of this Contract, the Director and the Concessioner may enter into an agreement under which the Concessioner will expend such funds for their obligated purposes in lieu of a remittance of those funds to the Director.

SEC. 11. FEES

(a) Franchise Fee

(1) For the term of this Contract, the Concessioner shall pay to the Director for the privileges granted under this Contract a franchise fee equal to [Franchise Fee alpha number] percent ([Franchise Fee numeric number]% of the Concessioner’s gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner’s Annual Financial Report. Overpayments shall be offset against the following year’s fees. In the event of termination or expiration of this Contract, overpayments will first be offset against any amounts due and owing the Government and the remainder will be paid to the Concessioner.

(3) All franchise fee payments shall be deposited electronically by the Concessioner in accordance with Applicable Laws.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

(d) Adjustment of Franchise Fee

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this Contract, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the
phrase “extraordinary, unanticipated changes” shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this Contract which have or will significantly affect the probable value of the privileges granted to the Concessioner by this Contract. For the purposes of this section, the phrase “probable value” means a reasonable opportunity for net profit in relation to capital invested and the obligations of this Contract.

(2) The Concessioner or the Director must make a request for consideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this Contract.

(3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.

(4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this Contract within sixty (60) days of the presentations.

(8) Any adjustment to the franchise fee resulting from this Section shall be prospective only.

(9) Any adjustment to the franchise fee will be embodied in an amendment to this Contract.

(10) During the pendency of the process described in this Section, the Concessioner shall continue to make the established franchise fee payments required by this Contract.

SEC. 12. INDEMNIFICATION AND INSURANCE

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys’ fees and experts’ fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for
bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this Contract. This indemnification shall survive the termination or expiration of this Contract.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract as determined by the Director. The initial insurance requirements are set forth below and in Exhibit I. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this Contract.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this Contract, as more specifically set forth in Exhibit I. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit I.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit I to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

(d) Property Insurance

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this Contract.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit I in amounts no less than the Director may require during the term of the Contract. The minimum values currently in effect are set forth in Exhibit I.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.
(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner’s operations under this Contract, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States, unless the damage exceeds $1,000,000. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverages and amounts described in Exhibit I.

SEC. 13. BONDS AND LIEN

(a) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner’s obligations under this Contract.

(b) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this Contract, and the payment to the Government of all damages or claims that may result from the Concessioner’s failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the Contract hereunder within the Area and any Leasehold Surrender Interest of the Concessioner.

SEC. 14. ACCOUNTING RECORDS AND REPORTS

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this Contract, including but not limited to the Concessioner’s repair and maintenance obligations. The Concessioner’s system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner’s annual gross receipts are $250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this Contract, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this Contract by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.
(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director (“Concessioner Annual Financial Report”).

(2) If the annual gross receipts of the Concessioner are in excess of $1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between $500,000, and $1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Statements on Standards for Accounting and Review Services (SSARS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than $500,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) Balance Sheet. Within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this Contract. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the Concessioner claims a Leasehold Surrender Interest. The schedule must describe these capital improvements in detail showing for each such capital improvement the date acquired, constructed or installed.

(2) Statements of Reserve Activity. The Concessioner must submit annually, not later than one hundred twenty (120) days after the end of the Concessioner’s accounting year, a statement reflecting total Component Renewal Reserve activity for the preceding accounting year. The statement must reflect monthly inflows and outflows on a project by project basis.

SEC. 15. OTHER REPORTING REQUIREMENTS

The following describes certain other reports required under this Contract:

(a) Insurance Certification

As specified in Section 12, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this Contract. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

(b) Environmental Reporting

The Concessioner shall submit environmental reports as specified in Section 6 of this Contract, and as otherwise required by the Director under the terms of this Contract.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the Contract or otherwise, including, but not limited to, operational information.
SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION

(a) Suspension

The Director may temporarily suspend operations under this Contract in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this Contract at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this Contract if the Director determines that the Concessioner has materially breached any requirement of this Contract, including, but not limited to, the requirement to maintain and operate Visitor Services to the satisfaction of the Director, the requirement to provide only those required and optional Visitor Services authorized by the Director pursuant to this Contract, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program, the requirement to duly expend funds from the Component Renewal Reserve and the requirement to comply with Applicable Laws. Termination by either party does not excuse the Concessioner from any obligations that accrued under the Contract prior to the termination.

(3) In the event of a breach of the Contract, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the Contract for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner’s operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this Contract upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to bankruptcy or insolvency.

(5) Termination of this Contract for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights

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granted by this Contract or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this Contract is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

(d) Requirements in the Event of Termination or Expiration

(1) In the event of termination of this Contract for any reason or expiration of this Contract, the total compensation due the Concessioner for such termination or expiration shall be as described in Section 17 of this Contract. No other compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this Contract, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this Contract for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner’s expense, promptly vacate the Area, remove all of the Concessioner’s personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this Contract for any reason or its expiration (unless the Director in particular circumstances requires immediate removal).

(3) To avoid interruption of services to the public upon termination of this Contract for any reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner’s personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner’s Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this Contract for any reason or its expiration, the Concessioner shall, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

(4) Prior to and upon the expiration or termination of this Contract for any reason, and, in the event that the Concessioner is not to continue the operations authorized under this Contract after its expiration or termination, the Concessioner shall comply with all applicable requirements of Exhibit J to this Contract, “Transition to New Concessioner.” This section and Exhibit J shall survive the expiration or termination of this Contract.

SEC. 17. COMPENSATION

(a) Just Compensation

The compensation provided by this Section shall constitute full and just compensation to the Concessioner for all losses and claims occasioned by the circumstances described below.

(b) Compensation for Contract Expiration or Termination

If, for any reason, including Contract expiration or termination, the Concessioner shall cease to be authorized by the Director to conduct operations under this Contract, the Concessioner shall convey to a person designated by the Director (including the Director if appropriate) any Leasehold Surrender Interest it has under the terms of this Contract and the Director shall, subject to the terms and conditions of this Contract, assure that the Concessioner is paid the Leasehold Surrender Interest Value.
(c) Procedures for Establishing the Value of a Leasehold Surrender Interest

At any time during the term of this Contract, the Concessioner shall, when requested by the Director, enter into negotiations with the Director as to the value of the Concessioner's Leasehold Surrender Interest under this Contract. In the event that such negotiations fail to determine an agreed upon value within a reasonable period of time as determined by the Director, the Director or the Concessioner may initiate arbitration proceedings to determine such value upon written request to the other party. Such arbitration proceedings shall be conducted in accordance with the arbitration procedures set forth in Exhibit A. In these circumstances, the Concessioner and the Director shall each select an arbiter. The two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel in accordance with Exhibit A. The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and shall determine the value of the Leasehold Surrender Interest consistent with the terms of this Contract, including without limitation Exhibit A. The arbitration panel shall also provide a means to calculate the change in the value of such Leasehold Surrender Interest as may occur for up to two (2) years from the date of the initial determination. The determination of the arbitration panel shall be binding on the Director and the Concessioner.

(d) Compensation for Personal Property

No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this Contract. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this Contract shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS

(a) This Contract is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this Contract for which the Director may terminate this Contract for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this Contract of any nature, including, but not limited to, Leasehold Surrender Interest or operating rights under this Contract, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this Contract.

SEC. 19. GENERAL PROVISIONS

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this Contract is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this Contract are not permitted.
(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this Contract.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise from this Contract but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.

(g) This Contract is subject to the provisions of 2 C.F.R. Part 1400, as applicable, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This Contract contains the sole and entire agreement of the parties, except for survival of the Concessioner’s commitments as set forth in its Offeror’s Transmittal Letter in response to the solicitation for this Contract. No oral representations of any nature form the basis of or may amend this Contract. This Contract may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) This Contract does not grant rights or benefits of any nature to any third party.

(j) The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this Contract.

(k) Waiver by the Director or the Concessioner of any breach of any of the terms of this Contract by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the Contract. The subsequent acceptance of any payment of money or other performance required by this Contract shall not be deemed to be a waiver of any preceding breach of any term of the Contract.

(l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this Contract shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

(m) Nothing contained in this Contract shall be construed as binding the Director to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Contract, or to involve the Director in any contract or other obligation for the future expenditure of money in excess of such appropriations.

SEC. 20. NATIONAL PARK SERVICE TRADEMARK LICENSE

(a) License Grant

The unique nature of a National Park Service concession blends commercial enterprise with the treasured historic, cultural, and, natural assets that the Director is responsible for protecting. The Director hereby grants to the Concessioner a royalty-free, non-exclusive, non-transferable license to use the marks as listed in Exhibit K (“Marks”), for use solely to carry out the services described under this Contract in manner that promotes National Park Service goals and values as stated herein. The Concessioner has the right to sub-license Marks in order to carry out services described under this Contract upon written approval of the Director and under same or substantially similar terms as contained herein. Any use of any Mark intended to identify the National Park Service, or one of the Concession Facilities, shall inure to the benefit of the National Park Service.
license shall cease upon termination or expiration of the Contract, or as otherwise determined by the Director or by law. This license does not constitute a compensable interest to the Concessioner.

(b) Quality Control and Goodwill

The Concessioner acknowledges that the maintenance of the high quality of the services, materials, products, and merchandise produced, sold or otherwise prepared for public dissemination pursuant to or in order to carry out services required under this Contract, as well as the control by the Director over their nature, quality, and manner of delivery or distribution, are material conditions of this Contract. The Concessioner shall maintain the distinctiveness of the Marks, the image of the National Park Service brand, and the image and high quality of the services, materials, products, and merchandise bearing the Marks licensed herein. Marks may be used and appear together with other marks used in connection with concession-related goods and services but must stand by themselves. The Concessioner shall immediately cease use of a Mark used in association with the services provided under this Contract on request of the National Park Service.

(c) Rights and Ownership

The Concessioner acknowledges that the National Park Service is the sole and exclusive owner of all right, title and interest in and to its Marks, including those licensed under this agreement, as well as to all combinations, forms, and derivatives which must be approved by the Director. The Concessioner further acknowledges, represents and warrants that it has not acquired and shall not acquire (whether by operation of law, by this Contract, or otherwise) any right, title, interest or ownership (collectively “Ownership Rights”) in or to any National Park Service Marks or any part thereof. Should any Ownership Rights become vested in the Concessioner, the Concessioner agrees to assign, and hereby assigns, all such Ownership Rights to the Director free of consideration. The Concessioner shall immediately provide and execute all documents reasonably requested by the Director to effectuate and record each such assignment. The Concessioner shall not, during the term or at any time thereafter, do anything which, in the Director's sole judgment, could in any way damage the validity and subsistence of the Marks. The Concessioner shall not attack, dispute, or challenge the National Park Service’s Ownership Rights in or to the Marks or the validity of this Contract, nor shall the Concessioner assist others in so doing.
IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Contract on the dates shown below.

CONCESSIONER

By ____________________________
[Name of signer]
[Title of signer]
[Company name]
DATE: ________________________, 20__

[Corporation]

ATTEST:

By ____________________________
[Name of signer]
[Title of signer]
DATE: ________________________, 20__

[Sole Proprietorship/Partnership/Limited Liability Company]

WITNESSES:

NAME___________________________
[Name of signer]
ADDRESS___________________________
DATE: ________________________, 20__

NAME___________________________
[Name of signer]
ADDRESS___________________________
DATE: ________________________, 20__
Programmatic Agreement Among The
U.S.D.A. Forest Service, Pacific
Southwest Region California State
Historic Preservation Officer, And
Advisory Council On Historic
Preservation Regarding Management Of
Historic Recreation Residence Tracts
PROGRAMMATIC AGREEMENT

AMONG THE

U.S.D.A. FOREST SERVICE, PACIFIC SOUTHWEST REGION
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND
ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING

MANAGEMENT OF HISTORIC
RECREATION RESIDENCE TRACTS

WHEREAS, the U.S.D.A. Forest Service, Pacific Southwest Region (Region 5) proposes to administer its Recreation Residence program, authorized pursuant to the Organic Administration Act of 1897 (16 U.S.C. 473, et seq.) and the Occupancy Permits Act of 1915(16 U.S.C. 497), and Forest Service regulations Special Uses (Subpart B; 36 C.F.R. 251.50); and managed under Forest Service Manual policy, Chapter 2340: Privately Provided Recreation Opportunities, subsection 2347 for Recreation Residences (FSM 2340) and Forest Service Manual policy, Chapter 2720: Special Uses Administration (FSM 2720) (see 59 FR 28714-28741); and managed under Forest Service Special Uses Handbook guidance, Region 5 Supplement No. 2709.11-2000-1, Chapter 40: Special Uses Administration, subsection 41: Recreation Special Uses (FSH 2709.11,41.23); and

WHEREAS, Region 5 has determined that its Recreation Residence program, policies, administration, and actions involve historic properties either included in or eligible for inclusion in the National Register of Historic Places (NRHP), and are subject to consideration under Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) (NHPA), and its implementing regulations, entitled Protection of Historic and Cultural Properties (36 C.F.R. 800); and

WHEREAS, Region 5 has consulted with the California State Historic Preservation Officer (SHPO) to develop the Strategy for Inventory and Historic Evaluation of Recreation Residence Tracts in the National Forests of California, From 1906 to 1959 (Lux, et al. 2000) (Recreation Residence Strategy), and is implementing this strategy to inventory and evaluate all historic Recreation Residence Tracts in the region; and

WHEREAS, past application of Forest Service Special Use Permit guidance was largely responsible for creation of the historic character of recreation residence tracts, as described in the contextual history of the Recreation Residence Strategy; and, on-going application of recreation residence Special Use Permit guidance (FSM 2720; FSH 2709.11,41.23) retains tract historic characteristics; and

WHEREAS, Region 5 has consulted with the SHPO and the Advisory Council on Historic Preservation (ACHP) pursuant to Section 800.14(b) of the

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regulations 36 C.F.R. 800 to develop and execute this Recreation Residence Programmatic Agreement (PA); and

WHEREAS, this PA applies only to Recreation Residence Tracts administered under Special Use Permit FSM 2720 and FSH 2709.11,41.23 guidance; and

WHEREAS, Region 5 shall ensure that this PA is tiered to and administered in coordination with the First Amended Regional Programmatic Agreement among the U.S.D.A. Forest Service, Pacific Southwest Region, California State Historic Preservation Officer, and Advisory Council on Historic Preservation Regarding the Process for Compliance with Section 106 of the National Historic Preservation Act for Undertakings on the National Forests of the Pacific Southwest Region (Regional PA), with the Programmatic Agreement among the U.S.D.A. Forest Service, Pacific Southwest Region, California State Historic Preservation Officer, and Advisory Council on Historic Preservation Regarding the Identification, Evaluation and Treatment of Historic Properties Managed by the National Forests of the Sierra Nevada, California (Sierra PA), or with any successor programmatic agreements thereto;

NOW, THEREFORE, Region 5, the SHPO, and the ACHP agree that the Recreation Residence program shall be administered in accordance with the following stipulations to satisfy Region 5's Section 106 responsibilities for all individual undertakings of the program.
STIPULATIONS

Region 5 shall ensure that the following measures are implemented:

I. DEFINITIONS

The following definitions, and those included in 36 C.F.R. 800.16, apply to this PA:

A. Authorized Officer is any Forest Service employee who has been delegated the authority to administer Special Use responsibilities, pursuant to 36 C.F.R. 251.51; the Authorized Officer for Recreation Residence Special Use Permits is either the District Ranger or the Forest Supervisor.

B. Exempt Undertaking is an undertaking that is exempt from further review or consultation under the Regional or Sierra PAs, and 36 C.F.R. 800, as specified pursuant to Stipulation III, Undertakings Under This PA, and specifically listed in Appendix A.

C. Heritage Program Leader (HPL) is the position on each National Forest (Forest) in Region 5 that is responsible for: directing, planning, and administering the Forest's Heritage Program; providing professional and technical advice to the Forest Leadership Team; directing the Heritage Program internally, and with external agencies, organizations, and the public; and planning and developing the Forest's heritage resource inventory, evaluation, management, and enhancement program. The HPL, and any person delegated the responsibilities of the HPL, shall operate at least at the journeyman level, and shall meet the professional standards established for either archaeologist or historian, as outlined in 36 C.F.R. 296.8 or in the Secretary of the Interior's Standards and Guidelines for Professional Qualifications (48 FR 44738-44739).

D. Historic Property is:

1. any prehistoric or historic district, site, building, structure, or object, and its associated artifacts, remains, features, settings, and records, that is either listed in or determined eligible for inclusion in the NRHP; or

2. any feature that contributes to district NRHP eligibility; or

3. any property, and its features, not yet evaluated to determine whether it is eligible for the NRHP, but that, for the purposes of this PA, may be assumed by Region 5 or a Forest to be NRHP eligible.

E. Maintenance is the act of keeping a facility or improvement in an ordinary, efficient, operating condition, including
preventive up-keep, normal repair, and activity needed to preserve the facility; maintenance is an undertaking pursuant to the NHPA. Four types of maintenance undertakings are covered under this PA:

1. **Screened Maintenance** includes the classes of undertakings listed in Section I of Appendix A which must be screened by the HPL for their potential to affect historic properties, and must be approved by the Special Use Administrator and authorized by the Authorizing Officer (see Stipulation III.A.1, and Section I of Appendix A).

2. **Special Use Administrator Approved Maintenance** includes the classes of undertakings listed in Section II of Appendix A that must be approved by Special Use Administrators and authorized by the Authorizing Officer for the Forest Service. These undertakings are not screened by HPLs; they have little potential to affect historic properties so long as they are carried out pursuant to the guidance in Section II of Appendix A (see Stipulation III.A.2).

3. **Interior Maintenance** involves repairs or changes to Recreation Residence interior characteristics that are not visible from the exterior (see Stipulation III.A.3, and Section III of Appendix A). Interior maintenance undertakings have little to no potential to affect historic properties.

4. **Minor Maintenance** involves repairs in-kind with identical or carefully matched materials, or inconspicuous installations where there are no visible effects to external historic characteristics, and no structural changes to the resource (see FSH 2709.11,41.23g,.1a; Stipulation III.A.4; and Section IV of Appendix A). Minor Maintenance undertakings have little to no potential to affect historic properties, so long as they are carried out pursuant to the guidance in Section IV of Appendix A.

F. **Off-lot Improvement** is any improvement or facility authorized to a Recreation Residence SUP holder that extends off the permittee's Recreation Residence Lot (e.g., a permittee's water system), or to a Recreation Residence association or group of Recreation Residence Tract permittees that extends outside the boundaries of the surveyed Recreation Residence Tract (e.g., a tract water system or dock), consistent with FSH 2709.11,41.23g.

G. **Permittee** or holder is the individual or group that has been issued a Special Use Authorization (**SUA**) or Special Use Permit (**SUP**), pursuant to 36 C.F.R. 251.50, to occupy and use National Forest System lands.

H. **Primary Facade** is that view of the recreation residence which provides the most important architectural presentation of the structure. Sometimes called the principle elevation, it can be the most decorated facade, the facade providing the most living activity, or the best view of the structure. It can be, but is
not necessarily, the entry to the building. If the structure has no clear primary architectural focus, the Primary Facade is the view that is the most visible from a public perspective.

I. **Recreation Residence** is the single family dwelling of noncommercial use located on a Recreation Residence Lot. The Recreation Residence dwelling and its associated authorized facilities are privately owned structures permitted for occupancy and use on National Forest System lands.

J. **Recreation Residence Lot** is the lot with Recreation Residence dwelling, and storage structure or other authorized facilities under Recreation Residence Special Use Permit, pursuant to 36 C.F.R. 251.50, FSM 2340, and FSM 2720, for noncommercial, recreational use, located within an identified Recreation Residence Tract. The Recreation Residence Lot is National Forest System land.

K. **Recreation Residence Tract** is the Region 5 identified, surveyed, and plotted tract on National Forest System land for Recreation Residence, noncommercial use, managed pursuant to FSM 2340 and 2720. The tract is the property level for historic property surveys and evaluations.

L. **Special Use** is any occupancy or use of National Forest System lands, improvements, and resources authorized pursuant to 36 C.F.R. 251.50.

M. **Special Use Administrator** is the Forest Service staff employee who has been delegated the responsibility to administer the Recreation Residence Special Use program for the Authorized Officer.

N. **Special Use Authorization** is the authorization or permit under 36 C.F.R. 251.50 issued to the permittee or holder to occupy and use National Forest Systems lands (used synonymously with SUP, below).

O. **Special Use Permit** is the authorization under 36 C.F.R. 251.50 issued to the permittee or holder to occupy and use National Forest System lands; the SUP is issued to the permittee or holder for occupancy and use of the Recreation Residence dwelling and its associated authorized facilities located on the Recreation Residence Lot (used synonymously with SUA, above).

P. **Undertaking** is any project, activity, or program under the jurisdiction of the Forest Service, including those carried out by or on behalf of the agency, and those requiring a SUA, SUP, or Forest Service approval (see Section 301(7) of the NHPA or 36 C.F.R. 800.16(y)).

## II. INVENTORY AND NRHP EVALUATION OF RECREATION RESIDENCE TRACTS

A. Region 5 shall inventory all properties within Recreation Residence Tracts. The Recreation Residence Strategy shall be used to conduct such inventory and NRHP evaluation.
B. The Region has more than 6,300 Recreation Residences permitted in 269 Recreation Residence Tracts. The Recreation Residence Strategy includes a priority list for accomplishing tract inventory and NRHP evaluation.

C. Under the Recreation Residence Strategy, Recreation Residence Tracts are treated as district properties, with individual lots and their structures and features contributing or not contributing to tract NRHP eligibility. The provisions of this PA apply to historic property Recreation Residence Tracts and to their specifically contributing features, and to off-lot improvements specifically tied to recreation residence lots or tracts.

D. Archaeological resources within recreation residence tracts, and historic resources that are not part of the tracts themselves but that lie within recreation residence tracts, are being inventoried, but are not treated as part of Recreation Residence Tract districts. Such resources will be separately evaluated for NRHP eligibility.

E. Because interiors of privately owned Recreation Residences are not visible to the public, it is agreed, under the Recreation Residence Strategy (Lux, et al. 2000:96) and this PA, that interiors do not contribute to NRHP eligibility of Recreation Residence Tracts.

F. Region 5 may propose to revise the Recreation Residence Strategy at any time, in consultation with the SHPO. The signatories agree that any such revision shall not necessarily require either concurrent or subsequent amendment of this PA.

III. UNDERTAKINGS UNDER THIS PA

A. Appendix A contains the list of undertakings that apply solely to recreation residence tracts and that are covered by this PA:

1. Screened Undertakings: Those classes of undertakings listed in Section I of Appendix A must be screened by the HPL for their potential to affect historic properties. Undertakings from Section I screened by the HPL as qualifying for exemption also require screening by the Special Use Administrator to ensure that they meet FSH 2709.11, 41.23 and other special use guidance for Forest Service authorization. Screened undertakings from Section I in Appendix A are otherwise exempt from further consultation pursuant to this PA or 36 C.F.R. 800. Screened exemptions from Section I of Appendix A in this PA must be reported in the Forest annual report under the Regional or Sierra PAs.

2. Special Use Administrator Approved Undertakings: Those classes of undertakings listed in Section II of Appendix A must be approved by Special Use Administrators and authorized by the Authorizing Officer. However, they are
not screened by HPLs, and they are otherwise exempt from further review or consultation pursuant to this PA, the Regional or Sierra PAs, or 36 C.F.R. 800. Using the definition of "effect" set forth in 36 C.F.R. 800.16(i), the signatories agree that these undertakings have little potential to affect historic properties so long as they are carried out pursuant to the guidance in Section II of Appendix A and FSH 2709.11,41.23.

3. Interior Undertakings: Changes to interior characteristics of recreation residences that are not visible from the exterior, as specified in Section III of Appendix A, are exempt from further consultation under this PA, the Regional or Sierra PA, or 36 C.F.R. 800. Using the definition of "effect" set forth in 36 C.F.R. 800.16(i), the signatories agree that these undertakings have little to no potential to affect historic properties. However, they may require other approvals, such as county permits, and must be checked with Special Use Administrators for such approvals.

4. Minor Maintenance Undertakings: Those classes of undertakings listed as Minor Maintenance in Section IV of Appendix A are exempt from further review or consultation under this PA, the Regional or Sierra PAs, or 36 C.F.R. 800. Using the definition of "effect" set forth in 36 C.F.R. 800.16(i), the signatories agree that these undertakings have little to no potential to affect historic properties, so long as they are carried out pursuant to the guidance in Section IV of Appendix A.

B. All other undertakings not specifically listed in Appendix A are not covered by this PA and require consultation pursuant to the Regional or Sierra PAs, or case-by-case consultation pursuant to the provisions of 36 C.F.R. 800, as necessary. These include, but are not limited to, destruction or abandonment of recreation residences, and termination or revocation of permits. In all such cases, the Forest Service shall complete consultation prior to making decisions.

C. Exempt undertakings in Attachment A of the Regional PA and Attachment 4 of the Sierra PA apply to recreation residence tracts.

D. A Forest may submit an otherwise exempt undertaking to the SHPO for consultation under this PA, the Regional or Sierra PAs, or 36 C.F.R. 800.

E. Undertakings pursuant to this PA must conform to Forest Service Special Uses Handbook guidance, Region 5 Supplement No. 2709.11-2000-1, Chapter 40: Special Uses Administration, subsection 41: Recreation Special Uses (FSH 2709.11,41.23), in addition to the historic guidelines specifically identified in Appendix A.

F. The locations of archaeological resources in inventoried tracts shall be reported by HPLs to Special Use Administrators to
ensure appropriate screening of ground-disturbing and other undertakings that may affect such resources. Special Use Administrators may permanently maintain these locations in Recreation Special Use files, but shall keep them confidential pursuant to guidelines provided by the HPLs.

1. Ground-disturbing and other undertakings that have the potential to affect known archaeological resources in inventoried tracts shall be referred to and screened by HPLs for appropriate treatment or consultation. Any questions regarding potential effects to archaeological resources shall be referred to HPLs.

2. Ground-disturbing and other undertakings that have the potential to affect archaeological resources shall not be approved for uninventoried tracts without Regional PA, Sierra PA, or 36 C.F.R. 800 consultation, as determined by the HPL.

G. Permittees are encouraged, but are not required, to remove inappropriate noncontributing elements and materials, and replace them with appropriate elements and materials that match historic characteristics. Any such replacements are considered undertakings, and require approval pursuant to this PA, or consultation pursuant to the Regional or Sierra PAs or 36 C.F.R. 800, as appropriate.

IV. EMERGENCIES

A. In the case of an emergency from a major disaster, such as forest fire or massive flood, the provisions of Stipulation VIII.B of the Regional PA or Stipulation IX of the Sierra PA may be invoked. The temporary, fully reversible measures of Stipulation IV.B, below, may also be used.

B. In the case of a minor emergency, such as damage from a fallen tree, temporary measures that are fully reversible (e.g., temporary use of tarps or plywood) may be used for emergency stabilization until provisions of this PA can be approved, or until consultation can be completed pursuant to the Regional or Sierra PAs, or via 36 C.F.R. 800.

V. OPERATIONS AND MAINTENANCE PLAN

The undertakings covered by this PA, as detailed in Appendix A, shall be incorporated into the Operations and Maintenance Plan for each SUP authorized within a historic property Recreation Residence Tract.

VI. REPORTING

A. Screened undertakings (Stipulation III.A.1; Appendix A.I) implemented on Forests in Region 5 pursuant to this PA shall be reported in Forest annual reports for the Regional or Sierra PAs, due March 1st, following each fiscal year.
B. Region 5's annual report for the Regional and Sierra PAs, due May 1st, following each fiscal year, shall include accounting of Forest activities pursuant to this PA, effectiveness of this PA, and recommendations for revisions or amendments related to this PA.

VII. REVISIONS TO APPENDIX A

Exempt undertakings may be added to or deleted from Appendix A in the following manner:

A. Upon written recommendation by any signatory to this PA, the signatories shall consider adding other classes of undertakings to Appendix A. Appendix A may be revised to include such additional exemptions upon the written agreement of all the signatories.

B. Upon written recommendation by any signatory to this PA, the signatories shall consider removal of any class of undertakings from Appendix A. Appendix A may be revised to exclude the exemption upon written agreement of all the signatories.

VIII. DISPUTE RESOLUTION

A. If any of the signatories to this PA objects to any aspect of its implementation, Region 5 shall consult with the objecting party to resolve the objection. Region 5 shall establish a reasonable time frame for this consultation.

B. If the objection involves a particular Forest's undertaking, the Supervisor of that Forest shall consult with the signatories to resolve the objection. The Forest Supervisor shall establish a reasonable time frame for this consultation.

C. If consultation fails to resolve the objection within the reasonable time frame, Region 5 shall forward all documentation, including SHPO comments if any, relevant to the objection to the ACHP.

1. Within 60 calendar days after receipt of all pertinent documentation, the ACHP will either:
   
   a. provide Region 5 with recommendations, which Region 5 will take into account in reaching a final decision regarding the dispute; or
   
   b. notify Region 5 that it will comment pursuant to 36 C.F.R. 800, and proceed to comment.

2. Any ACHP comment provided in response to an objection shall be taken into account by Region 5 with reference to the subject of the dispute. Region 5's responsibility to carry out all actions under this PA that are not the subject of the dispute shall remain unchanged.
D. Appeal by a permittee of a Forest Service decision about any proposed undertaking covered by this PA shall be subject to the appeal regulations at 36 C.F.R. 251, Subpart C, Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands.

IX. AMENDMENT AND TERMINATION OF THIS PA

A. Any signatory to this PA may request it be amended; whereupon, the signatories shall consult to consider such amendment. Any amendment shall be executed in the same manner as the original PA.

B. Any signatory to this PA may terminate it by providing 60 days written notice to the other signatories, provided that the signatories consult during the period prior to termination to seek agreement on amendments or other actions that might avoid termination. In the event of termination, Region 5 shall comply with the Regional or Sierra PAs or with 36 C.F.R. 800 with regard to individual undertakings covered by this PA.
Execution and implementation of this Recreation Residence PA evidence that Region 5 has afforded the ACHP the opportunity to comment on the management of historic recreation residence tracts in California and its effects on historic properties, and that Region 5 is taking into account the effects of such management on historic properties.

U.S.D.A. Forest Service, Pacific Southwest Region

/s/ Katherine Clement (for) Date: 02/15/02
JACK A. BLACKWELL
Regional Forester

State of California, Office of Historic Preservation

/s/ Knox Mellon Date: 2/26/02
DR. KNOX MELLON
State Historic Preservation Officer

Advisory Council on Historic Preservation

/s/ John M. Fowler Date: 3/20/02
JOHN FOWLER
Executive Director
APPENDIX A

Exempt Undertakings for Recreation Residences

The following Exempt Undertakings apply only to Recreation Residences and Recreation Residence Tracts under the provisions of this PA.

I. Screened Undertakings:

The following screened undertakings require HPL screening for historic characteristic compatibility. They may or may not be approved based on historic preservation needs. In addition, they require Special Use Administrator approval and Forest Service authorization. Screened undertakings are otherwise exempt from further review or consultation pursuant to this PA or 36 C.F.R. 800; but, they must be reported as screened exemptions in the annual report for the Regional or Sierra PAs.

1. Structural upgrades to meet building code or health and safety requirements that are visible but otherwise meet FSH 2709.11, 41.23 guidance and the Secretary of the Interior's Standards and Guidelines for Rehabilitating Historic Buildings.

2. Installation of an accessible elevator when not visible from the primary facade, and where matching exterior historic fabric and character.

3. Minor addition (less than 9 square feet) for storage or installation of mechanical equipment (e.g., water heater or furnace) on building exterior, if the addition meets the Secretary of the Interior's Standards and Guidelines for Rehabilitating Historic Buildings, when not visible from the primary facade, and where matching surrounding exterior fabric and historic character.

4. Installation of light tubes and skylights, if they are not visible from the primary facade, if installation meets the Secretary of the Interior's Standards and Guidelines for Rehabilitating Historic Buildings, and if their installation is compatible with the historic materials and character of the recreation residence and the tract as a whole.

5. Addition, reconstruction, or remodeling (e.g., addition of dormers or a room, or updating a bathroom or kitchen) that substantially alters the exterior appearance of the cabin, if its plans are completed by a licensed architect or general contractor, as follows. The licensed architect or contractor must use the skills of a preservation engineer, historic architect, or architectural historian to develop the plans; must have experience in rehabilitation of historic buildings; and must apply the Secretary of the Interior's Standards and Guidelines for Rehabilitating Historic Buildings to development of the
plans. The addition, reconstruction, or remodel must meet the guidelines in FSH 2709.11, 41.23g 2b and/or 2c, and must be compatible with the historic character of the recreation residence and with the character of the tract as a whole. For example, if the recreation residence is a log cabin, the addition must be of log construction that matches the original fabric and overall building character.

6. Enlargement, addition, or removal of porches, decks, cornices, and stairs, when consistent with FSH 2709.11, 41.23, 2d. Any enlargement or addition shall be done in-kind to match historic material and design, and the style, materials, and character of the structure.

7. Addition or expansion of an outbuilding under FSH 2709.11, 41.23g, 2f. The outbuilding must match the historic fabric and character of the recreation residence. The HPL must take into account the potential effect of the outbuilding on the historic character of the recreation residence, the tract, and its setting.

8. Removal of unauthorized outbuildings of 40 square feet or smaller that are either unevaluated or contribute to the historic character of the recreation residence and the tract. The HPL must take into account the potential effect of removal on the historic character of the recreation residence, the tract, and its setting.

9. Ground disturbing and other undertakings that may be implemented using effective treatments identified in the Standard Resource Protection Measures of Attachment B in the Regional PA or Attachment 7 in the Sierra PA.

10. Removal, using heavy equipment, of isolated hazard trees that are not part of timber sale activity.

11. Hazard tree removal as part of timber sales and other screened exemptions covered pursuant to Attachment A of the Regional PA or Attachment 4 of the Sierra PA.

12. Off-lot improvements (see FSH 2709.11, 41.23g, 2g) for the recreation residence tract, unless otherwise exempted.

II. Special Use Administrator Approved Undertakings:

The following undertakings require Special Uses Administrator approval, and Forest Service authorization; some may also require county building permits. However, they do not require HPL screening. They have little potential to affect historic properties so long as they are administered pursuant to the guidance provided here and in Region 5 Supplement No. 2709.11, 41.23g. When conforming to this guidance, they are exempt from further consultation pursuant to this PA, the Regional or Sierra PAs, or 36 C.F.R. 800. Where materials other than matching or in-kind are allowed, the differences are the result of requirements to meet fire or health and safety codes. Where proposed undertakings
have the potential to affect archaeological resources, the Special Use Administrator shall contact the HPL pursuant to Stipulation III.F.

A. Structural Elements:

1. Repair or replacement of siding or trim, when done in-kind to match historic material, design, and approved color. If the existing paint color is not desirable, the color used shall be in keeping with historic color schemes approved for the recreation residence tract and consistent with FSH 2709.11.41.23g, 3d.

2. Replacement of window frames to match historic material, design, and approved color. The same historic configuration of panes must be retained. This includes energy efficient wood frames, so long as the exterior appearance matches the historic, but excludes exterior clad wood frames.

3. Replacement of glass, when done in-kind to match historic form, design, and transparency. Window and door panes may be double or triple glazed as long as the glazing is clear and replacement does not alter the historic window or door form. Energy efficient glazing may be used. This excludes the use of tinted glass, which requires consultation.

4. Repair or replacement of doors, when done in-kind to match historic material, form, and approved color.

5. Replacement of a door with a widened door to meet Americans with Disabilities Act requirements. It is preferable to have a wider door located on a nonprimary facade. However, if the only reasonable alternative for placement of a widened door to meet disability standards is on a primary facade, the door may be widened so long as the historic fabric and overall character of the historic appearance of the door and its surrounding wall are maintained.

6. Repair or replacement of porches, decks, cornices, and stairs, when done in-kind to match historic material and design, and the style, materials, and character of the structure, and when consistent with FSH 2709.11.41.23, 2d.

7. Addition of an accessibility ramp which blends with the historic materials and style of the recreation residence and its porch or deck.

8. Repair or replacement of foundations when the work does not change the structure's historic appearance.

9. Installation of skirting over or enclosing a structure's crawl space, constructed and painted an approved color to match or blend with the structure's historic fabric and character.

10. Repair or replacement of masonry, matching historic materials to not change the structure's historic appearance.

11. Repair or replacement of roofs or parts of roofs that are deteriorated, when done in-kind or where matching historic
material and design. In areas of high fire danger, fire retardant roofing is allowed. Where health or safety is a concern, asbestos or other harmful materials may be removed. Fire retardant and safe materials, consistent with FSH 2709.11,41.23g, 4e, may be used; such materials must match the original or approved roofing color and be as compatible with the design and character of the building as possible. Adequate anchorage for roofing material to guard against wind damage and moisture penetration shall be provided.

12. Installation of removable solar panels consistent with FSH 2709.11,41.23g, 3r, where installation does not compromise historic fabric, in inconspicuous locations, so that they are not visible from the primary facade, and so that their visible features blend with historic fabric and character.

13. Structural upgrades to meet building code or health and safety standards, where such structural changes are not visible. Examples include: increasing the number of joists supporting a deck when they are hidden by skirting or the decking itself; or, repairing a chimney and/or flue with reinforced masonry, where the reinforcement is not visible to the building's exterior, so long as the original material is matched and maintained as a facade.

B. Surfaces:

1. Painting exterior surfaces, when new paint matches the existing or historic color. If the existing paint color is not desirable, the color used shall be in keeping with historic color schemes approved for the recreation residence tract and consistent with FSH 2709.11,41.23g, 3d.

2. Removal of hazardous materials or surfaces, such as asbestos and lead paint, and replacing them with nontoxic materials that resemble the historic surfaces as closely as possible.

3. Pointing or grouting masonry to match historic characteristics.

C. Utility Systems:

1. Installation of mechanical equipment that does not affect the visual integrity of the lot or exterior fabric of the recreation residence.

2. Replacing, removing, or upgrading electrical wiring, where installation of exterior features is confined to the wiring itself and a single replacement or addition of a breaker box inconspicuously placed on a minor facade.

3. Repairing, replacing, removing, or upgrading underground gas, heating, septic, sewer, storm, or water systems, and underground electrical, gas, heating oil, water, sewer, or leach lines, where external historic features, such as hand pumps, are left in
place, where these activities are restricted to specific, identified, previously disturbed areas, and where no archaeological resources are present.

4. Replacement of above-ground water tanks with ones of fiberglass or metal, when the color and texture of the existing or historic tanks are replicated, or when landscaping camouflages the replacement tank. Redwood tanks with plastic inserts are also feasible. Where no archaeological resources are present, construction of a structure around a tank to control temperature is allowed when landscaping camouflages visible changes.

5. Replacement, enlarging, or installation of above-ground liquid propane gas systems or heating oil storage tanks, if tanks meet code and are appropriately screened to not impinge upon the historic setting.

6. Replacement of historic communications equipment, when the same size, shape, and general configuration are retained, or installation of inconspicuous communications equipment, consistent with FSH 2709,11, 41.23g, 3k; this excludes large antennae, and large satellite or communications dishes.

D. Surrounding Features:

1. Excavations for repair or replacement of building footings or foundations within two (2) feet of existing footings and foundations, where no archaeological resources are present.

2. Closing off and removing unauthorized driveways, walkways, and other unauthorized cultural landscape features, allowing natural regeneration of vegetation.

3. Repair, replacement, or addition of exterior lighting that blends with the landscaping and historic style of the recreation residence.

4. Repair or replacement of existing driveways, walkways, and other cultural landscape features, when done in-kind to match existing or historic materials and design.

5. Repair or replacement of authorized fencing done in kind to match existing or historic materials and design.

6. Ongoing maintenance of immediately surrounding landscape vegetation, including removing nonnative vegetation and adding native vegetation that blends with the historic scene, so long as historic landscape characteristics are maintained and the method of vegetation removal or planting does not disturb previously undisturbed ground or archaeological resources.

7. Removal, without the use of heavy equipment, of isolated hazard trees that are not part of timber sale activity.

8. Installation of interpretive signs or exhibit structures which are not attached to historic structures and do not visually intrude on the historic landscape. Signs and exhibits should be
constructed of materials and painted colors that harmonize with the recreation residence tract.

III. Interior Undertakings:

Changes to interior characteristics of recreation residences that are not visible from the exterior are exempt; they have little to no potential to affect historic properties. However, they may require other approvals, such as county permits, and must be checked with Special Use Administrators for such approvals.

IV. Minor Maintenance Undertakings:

Undertakings that qualify as Minor Maintenance are exempt; they have little to no potential to affect historic properties. Minor Maintenance undertakings do not require approval, from either HPLs or Special Use Administrators. Minor maintenance undertakings involve repairs in-kind with identical or carefully matched materials, or inconspicuous installations where there are no visible effects to external historic character or fabric, and no structural changes to the resource. (See FSH 2709.11,41.23g,.1a.) Minor maintenance undertakings do not include repairs or installations with materials that differ from or do not match historic fabric and character or that intrude on exterior views. The following are minor maintenance undertakings:

1. In-kind replacement of hardware, such as door knobs, door and window latches, hinges, locks, etc.

2. Installation of security hardware, such as dead bolts, door locks, window latches, and inconspicuous door peep holes, matching historic hardware as closely as possible.

3. Installation of inconspicuous burglar or other alarm systems that do not intrude on external historic character or fabric and are not visible from exterior views.

4. Replacement of broken window pane glass in existing, historic window frames, matching historic form, design, and transparency.

5. Application or replacement of caulking or weather stripping, where it is inconspicuous to outside views.

6. Minor in-kind repair of siding, trim, roofing, or deck/porch flooring material confined to a few boards.

7. Limited (less than one square foot) repair of window frames and shutters by patching, splicing, or consolidating with epoxy resin or similar materials.

8. Protection and maintenance of historic fabric through appropriate surface treatments such as cleaning, rust removal, limited (affecting no more than one square foot) paint removal and reapplication of protective coatings, using approved historic color and texture.
9. Limited (less than one square foot) pointing or grouting of masonry matching historic materials.

10. Replacement of lightening rod wiring with new copper wire.

11. Replacement of light bulbs, batteries, and other such removable or replaceable parts; energy efficient florescent bulbs may be used, so long as similar lumens are maintained.

12. Maintenance, repair, or in-kind replacement of previously approved signs.

13. Ongoing up-keep of recreation residence lots that includes removal of trash and dead and downed debris.

14. Fire prevention measures mandated by state fire prevention codes.
STATEMENT OF THE NATIONAL PARK HOSPITALITY ASSOCIATION ON PROPOSALS BY THE US DEPARTMENT OF THE INTERIOR TO IMPROVE VISITOR EXPERIENCES THROUGH CONCESSIONER-PROVIDED SERVICES AND INFRASTRUCTURE

We appreciate the U.S. Department of the Interior’s invitation to comment on proposed actions to improve the enjoyment and safety of national park visitors in ways which support the protection of natural and historic park assets. We strongly support these goals and will offer comments on the specific actions.

America’s national parks are a global treasure and an inspiration to all who believe in mankind’s ability to demonstrate vision. Generations of Americans have had lives shaped by exposure to these special areas. Concessioners are proud of our partnership role in these experiences. We have supported the National Park Service for more than one hundred years, providing billions of memories treasured by park visitors across those years, usually seamlessly to the public. We applaud the spirit of the proposed changes which is to make minor modifications to a proven program to encourage excellence by the agency’s business partners in meeting the public’s needs.

Concessioners operate under thousands of agreements administered by the National Park Service. By law, concessioner services have always been and will continue to be limited to “necessary and appropriate” services for visitors as determined solely by the National Park Service. These services include lodging and food services, transportation and sale and rental of recreation equipment, souvenir sales, guide and recreation services and more. Concessioners include leaders in the national hospitality industry as well as hundreds of small businesses that are often multi-generational and very specialized. Most operate in very challenging environments: locations that are often distant from traditional labor markets and subject to seasonality, weather, wildfires and even government shutdowns.

We believe that the proposals by the Department will permit concessioners to better serve park visitors for generations to come, especially by facilitating appropriate investments to modernize, maintain and, where appropriate in the view of the agency, expand visitor services using best practices and contemporary skills. Importantly, the proposals adhere to a core principal: all structures in parks, even those that rely on concessioner funds for their existence, will remain the property of the American people and will be administered solely by the National Park Service.

1/19/2020
ADDENDUM TO NPHA STATEMENT ON VISITOR SERVICES IMPROVEMENT PROPOSAL

Some Key Questions and Answers:

Will these proposed changes price Americans out of their parks?

No. Whether in food services, transportation, guided adventures or lodging, we are committed to great experiences widely available to all Americans. In food service, our goal is great, affordable food for snacks, casual meals or fine dining. The proposals will continue a policy of offering core menus of traditional foods in most locations that are as affordable as possible – but also offering diverse and innovative food options to our visitors. For lodging, we believe that Americans deserve great value in a wide range of overnight experience choices … from world class stays in historic lodges to inexpensive stays in tents at some of the world’s most scenic locations. We can and will encourage visiting loved areas during non-peak seasons and even extending operating seasons. But some things will never be compromised – safety, for example. And clean, working restrooms. Today and long into the future, concessioners will demonstrate our expertise in the hospitality industry.

Are concessioners committed to protecting America’s national parks?

Yes. NPHA is proud to play a role in helping the National Park Service fulfill its important mission, which states, “The National Park Service preserves unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations. The Park Service cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.” NPHA members are some of those partners.

In addition to it being the right thing to do, concessioners are further driven to protect and enhance our parks because our economic future depends on their preservation. And proof comes from our proud history – partners in park protection for over a century.

As individual companies, we embrace – and are honored for – extraordinary commitments to green operations in special places, from LEED Platinum building certification to recycling and zero refuse operations, and we partner with the National Park Foundation and other park partners to generate millions annually through guest donation programs and more.

Did the National Park Hospitality Association recommend changes to the NPS concessions program?

Yes, in an effort to implement lessons learned since 1998. The National Parks Hospitality Association (NPHA) has always worked closely with the U.S. Department of the Interior and the National Park Service on concessions program operations. The concessions program has been shaped by two sets of laws and regulations – first in 1965 and then in 1998 – and has evolved over time. NPHA regularly offers modifications to the program. For example, NPHA urged improvements to annual reviews of concessioner performance to eliminate a pass/fail system and recognize outstanding operations and requested action to mitigate the impact of the government shutdown in 2013.
After more than 20 years of experiences under the most recent law, NPHA began suggesting means to make concessions operations nimbler and more responsive to growth in the US population and the national park system more than ten years ago. Over those 20 years, we have seen dramatic changes in technology and travel patterns. The first iPhone was released in 2007, and civilian access to GPS was in its infancy in 1998. Expedia had just been launched by Microsoft, and services like WiFi, Uber, Airbnb and more have all emerged since the last major review of concessions regulations.

We have held dozens of meetings with department and agency officials and together, we have found areas of agreement on topics including rewarding excellence in operations and support for broad park goals. In mid-2018, NPHA submitted a series of recommendations to the U.S. Department of Interior aimed at promoting more accessible visitation and responsible enjoyment of our public lands for all Americans. We are pleased that the proposed actions address some of these suggestions.

NPHA appreciates the opportunity to comment on the proposals for the future of our majestic and priceless national parks. We look forward to a robust dialogue with the agency and its many constituents to support “great visitor experiences in great places.”

Will these changes privatize and commercialize national parks? Will National Park Service jobs be lost?

No. National parks never have been and never should be privatized or commercialized. Concessioners cherish the special skills of National Park Service employees – including education and interpretation and protection of wildlife, natural, historic and cultural resources and orchestrating the efforts of concessioners, other federal agencies and park partners and even gateway communities. We have supported efforts to maintain and expand agency resources and personnel through appropriations, fees and more. The jobs concessioners do – from piloting vessels to the Statue of Liberty to preparing food to serving the needs of motor vehicles in parks – free up National Park Service staff to do what they do best. National Park Service concessioners today proudly serve about one in every three visitors to the system, providing an estimated 25,000 jobs and more than $150 million in direct franchise fee payments to NPS annually. Our companies have invested billions in private capital in parks – in lodges, water systems, green power systems and more – because we believe in long-term, sustainable operations in our parks. And we are an important part of the outdoor recreation industry, recently measured by the federal Bureau of Economic Analysis as responsible for $787 Billion in Gross Output annually, an astonishing 5.2 million jobs and much faster growth than the US economy overall.

What is LSI and why are changes being proposed?

LSI is the abbreviation of Leasehold Surrender Interest. LSI was created by the Congress in 1998 to recognize that private investment without private ownership in visitor services needed a strategy for pay-back. Concessioners are generally not in favor or against LSI, but it is the law currently. The current means of obtaining LSI credit is administratively cumbersome and in some cases LSI eligibility may prevent certain projects that can improve visitor services or facilities from being approved. Concessioners would welcome an opportunity to address capital investment policies that allow for a reasonable rate of return to concessioners and support appropriate, NPS-approved investment in facilities. A change in the method for managing and crediting concessioners for their capital investments can help to cure deferred maintenance and provide
enhanced services to park visitors while reducing the administrative burden on both concessioners and the government.

Will these changes have any impact on the terrible $12 Billion backlog in park maintenance?

Yes. NPHA takes seriously our role in helping the National Park Service address the agency’s multibillion-dollar maintenance backlog, which threatens the health of our parks and safety of parks visitors. These changes will complement other changes underway to provide the funds needed to sustainably operate our parks. Concessions agreements require concessioners to perform all normal maintenance and, in many cases, require investments in needed upgrades and major repairs for the park buildings and infrastructure they utilize. This substantially reduces competition for monies appropriated to the agency. In addition, concessioners make annual payments of more than $150 Million to the agency in franchise payments available for maintenance and operations.

America’s National Parks belong to all Americans and are a wonderful forum for telling the world about key American values and experiences. Will these actions support these roles?

Yes, indeed. The association believes strongly that if all segments of the American public do not experience the parks, they will not grow to love them and support the resources needed to protect our parks for future generations. Our members work with youth through school, church and other entities to facilitate visits and hire large numbers of diverse youth directly and through conservation and service corps to connect our parks with segments of the population that traditionally visit parks less frequently. We are excited and celebrate new connections – as when urban youth from Baltimore worked for four months in Shenandoah National Park on a project to reconstruct a historic stable complex and, through their time in the park, became ambassadors for national parks in their home community. We also actively market national parks to international visitors through trade shows and active engagement in the travel industry. Because of our use of contemporary hospitality skills, we have top-notch information on many domestic and international park visitors and potential visitors, and share this information with key federal officials to help forecast needs and to develop collaborative efforts to match visitor desires with park unit capabilities and features.

The National Park Service is also publishing proposed regulations for a new visitor services program, the Visitor Experience Improvement Authority (VEIA). Does NPHA support VEIA?

NPHA fully supports the purpose behind the creation of VEIA, which was to give NPS additional contracting flexibility to allow it to modernize and improve the condition of commercial visitor facilities and services. As partners in ensuring the public’s needs in our National Parks is met, NPHA and NPS are united in this ultimate goal. To the extent the proposed regulations carry out this goal, we fully support them. However, NPHA has not yet had a chance to review the proposed regulations but will be happy to provide its comments once that review occurs.

Do concessioners want to manage all the campgrounds in national parks?

No. There are many campgrounds in the national parks that have no need for concessioners. But concessioners can play a role in taking care of the maintenance needed to ensure developed campgrounds meet visitors’ needs. NPHA wants good campgrounds in national parks that are safe, enjoyable and provide appropriate experiences to those planning to stay in our parks.
Overnight stays in national park campgrounds have produced generations of park champions. But this tradition is at risk. Between 1987 and 2016, the US population grew by 33%. During that same period total overnight stays in park campgrounds dropped by 12% -- two million fewer experiences every year. Why the drop? Partly because of campgrounds closures prompted by budget challenges. And those that remain -- there are now 1421 campgrounds -- suffer from more than $330 million in deferred maintenance. Concessioners now manage 81 of those campgrounds in developed, front country areas and would like to invest in better bathrooms, ADA-compliance, amphitheaters (only 60 of all 1420 now have them!), showers (only 130 year-round hot showers today), basic electrical service (now at only 36 campgrounds), WiFi (now at only 33 campgrounds) other basic camper support -- plus operate for longer seasons. Public/private partnership can restore campgrounds to world-class status but does not mean cookie-cutter campgrounds, all with the latest amenities. Some campgrounds -- and some loops of some campgrounds -- should remain low-amenity zones, meeting the expectations of some campers and emphasizing affordability. But we should not deny enjoyable stays, and stays over longer seasons, by other campers who are willing to pay for the increased costs of selected services.

1/10/2020 v6
**NPHA Communications Strategy for 2020**

**Status**

Action is anticipated soon on formal announcements of rulemaking on the Visitor Experience Improvement Act (VEIA) and updated regulations for the NPS concessions program. Key developments including emergence of coronavirus as a major concern, as well as FY2021 budget issues, have delayed action on both issues – which are logically interconnected. NPS’ growing interest in Second Century Campgrounds and continuing discussions about the urgency of overcoming persistent problems with meeting the park system’s maintenance needs add new importance to the rulemaking efforts.

**Recommendations**

At NPHA’s January 2020 board meeting, the 2020 budget was approved unanimously with a special account for communications efforts connected with the rule-making efforts. NPHA staff was directed to develop a program for achieving success in efforts to improve visitor services in parks through enhanced concessioner efforts.

Discussions with several entities interested in working with NPHA occurred. The final outcome is a dual program utilizing a communications expert based in Denver for strategy and coordination of media efforts and Kevin Garden as NPHA’s external expert on concessions law and regulations and NPHA’s suggested improvements.

In addition, the NPHA Communications Strategy has these important new developments.

1) While Kevin will be our lead spokesperson with media to discuss details of our suggestions and explanation of the benefits of more nimble and updated concessioner agreements, wherever possible he will work jointly with NPHA Ambassadors from NPHA member companies able to communicate the commitment to mission by concessioners, able to offer tangible examples of this commitment benefitting parks and park visitors while conveying the diversity of concessioner workforces.

2) We will aggressively seek to explain the role and commitment of concessioners starting now. Examples include outreach to key park partners (NPF, NPT, TCN, US Travel and more) and through use of available forums (like the National Park System Advisory Board meeting in Sausalito on March 11).

3) We will use the NPHA March annual meeting to roll out resources for NPHA members (and especially member CEOs and Ambassadors) and to boost participation in the public comments process for VEIA and regulatory reform).

4) We will rely on NPHA members to upgrade communications with key Members of Congress on reform and preparedness for emergencies including coronavirus, wildfires and more).

5) We will create a key communications task force team that will start each week with a videoconference and develop actions priorities for the week.

6) Throughout the effort, we will coordinate with department and agency leadership and communications officials.
<table>
<thead>
<tr>
<th>Month</th>
<th>Key Actions</th>
<th>Lead Roles</th>
<th>New Budget Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>March</td>
<td></td>
<td>BHFS TBD</td>
<td>Garden TBD</td>
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<tr>
<td>April</td>
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<td>September</td>
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<tr>
<td>5-month commitment</td>
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<td>$65,000</td>
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3/2/2020
<table>
<thead>
<tr>
<th>Task</th>
<th>Lead, Key Actions</th>
<th>Timing</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Select and Train Spokesperson on Responding to Technical Issues and Integration with Ambassadors</td>
<td>NPHA executive committee, NPHA communications advisor</td>
<td>Select by March 4; training by 3/18</td>
<td>Kevin Garden is willing and details of his engagement as the spokesperson on the details of changes will proceed.</td>
</tr>
<tr>
<td>Recruit, Train and Utilize Ambassadors</td>
<td>NPHA communications strategist</td>
<td>Initial list by 2/28; ongoing</td>
<td>Survey of potential ambassadors has been initiated by NPHA staff</td>
</tr>
<tr>
<td>Prepare and Post on NPHA Website Examples of Corporate Mission and Commitment (Text and Video)</td>
<td>NPHA staff</td>
<td>By 2/28, updated continuously</td>
<td>Approximately 5 examples are ready for posting – news stories and video clips. Additional elements are in development</td>
</tr>
<tr>
<td>Research Likely Adverse Media Sources and Topics and Develop Strategy for Mitigation</td>
<td>NPHA communications advisor</td>
<td>By 3/13</td>
<td>TBA</td>
</tr>
<tr>
<td>Prepare and Update NPHA Position Statements on VEIA, 1998 Act Regs and Policies</td>
<td>NPHA staff through the Communications Task Force, with advice from NPHA communications advisor</td>
<td>By 3/6; living document</td>
<td>Drafts of 1998 Reg Change Statement and Q&amp;A completed. VEIA and positive-focused case for action in development</td>
</tr>
<tr>
<td>Plan and Manage Outreach Campaigns: NPHA Member Employees and Vendors; Allied Organizations and Agencies</td>
<td>NPHA communications advisor, with assistance from NPHA staff</td>
<td>By 3/29</td>
<td>Discussed between NPHA staff and proposed NPHA communications advisor</td>
</tr>
<tr>
<td>Ongoing Liaison with Interior, NPS</td>
<td>NPHA staff</td>
<td>Ongoing</td>
<td>Ongoing with Secretary’s staff, NPS</td>
</tr>
<tr>
<td>Proactive Media Outreach: ID Targets and Deliver Op Eds, Offer Interviews and More, with Focus on Park Gateways and Business-Focused Media</td>
<td>NPHA communications advisor, with assistance from NPHA staff</td>
<td>Plan by 4/3; action in April and May</td>
<td>TBA</td>
</tr>
<tr>
<td>Monitor Submissions to Public Records to Respond as Needed</td>
<td>NPHA staff</td>
<td>Ongoing</td>
<td>Commence following FR publication</td>
</tr>
<tr>
<td>Brief Key Congressional Offices and Keep Informed</td>
<td>NPHA staff and NPHA members</td>
<td>Ongoing</td>
<td>Commenced and continuing</td>
</tr>
<tr>
<td>Use of NPHA Annual Meeting as a Forum for Discussion, Training and Action</td>
<td>NPHA staff, NPHA Communications Task Force and NPHA communications advisor</td>
<td>March 15-18</td>
<td>Planning underway</td>
</tr>
<tr>
<td>Develop Social Media Plan</td>
<td>NPHA communications advisor</td>
<td>By 3/13</td>
<td>TBA</td>
</tr>
</tbody>
</table>
NPS Public Health Update

The National Park Service (NPS) strives to ensure the safety of its visitors, employees, volunteers, and partners. When the NPS is responding to an ongoing public health incident, this page will provide timely updates about NPS response activities and links to specific information about parks that may be involved.

The NPS coordinates closely with the Centers for Disease Control and Prevention (CDC), state and local public health authorities, and the Federal Emergency Management Agency (FEMA).

2019 Novel Coronavirus (COVID-19)

As of March 11, 2020

The CDC is responding to an outbreak of respiratory disease caused by a novel (new) coronavirus (COVID-19) that was first detected in China and has expanded internationally, including in the United States.

The NPS Office of Public Health, Office of Risk Management, and the Division of Law Enforcement, Security, and Emergency Services, in conjunction with the Department of the Interior (DOI) Office of Occupational Safety and Health and Office of Emergency Management (OEM), are responsible for managing and supporting activities to prevent, protect against, mitigate, and respond to such hazards. Over the last couple of weeks, they have been actively engaged and coordinating efforts to respond to the COVID-19 outbreak.

- National parks are open and facilities are maintaining continuity of operations.
- The NPS Office of Public Health and the US Public Health Service officers assigned to the NPS are closely monitoring the situation and keeping staff informed, relying on the most updated data and information from the CDC, OPM, OEM, and state and local public health authorities.
- The NPS is focused on ensuring employees, their families, volunteers, and visitors are safe by following the most current guidance from the CDC, OPM, OEM, and other federal, state, and local health authorities.

Public Health Preparation and Response

Visitors can be assured that facilities in national parks, including lodges and restaurants, continue to monitor conditions and maintain high standards related to the health and wellness of staff and visitors. Park and concession staff are working to maintain clean and healthy facilities in parks in accordance with CDC guidance.
guidance, NPS Public Health Service Officers recommend that everyone should take the following routine precautions:

- Avoid close contact with sick people.
- Avoid touching your eyes, nose, or mouth.
  - Wash with soap and water to destroy the virus. Wash your hands for at least 20 seconds.
  - While an alcohol-based hand sanitizer that contains 60%–95% alcohol can be used, it’s best to reserve those resources for work locations where soap and water are not readily available.
  - If your hands are visibly dirty, soap and water should be used rather than hand sanitizer.
- As always, it is especially important to clean hands after going to the bathroom; before eating; and after coughing, sneezing or blowing your nose.
- Clean and disinfect frequently touched objects and surfaces. Regular household cleaners will destroy the virus.
- The CDC does not recommend that people who are well wear a facemask to protect themselves from respiratory diseases, including COVID-19.
- **Most importantly, stay home when you are sick in order to avoid exposing others.**

### Other Federal Resources and Information

**Centers for Disease Control and Prevention**

The **Centers for Disease Control and Prevention (CDC)** at the Department of Health and Human Services is the lead federal agency with responsibility for public health.

**What the U.S. Government is Doing**

GSA has created a **landing page on USA.gov (Español)** for government-wide information related to COVID-19 activities.
NPHA members serve millions of Americans in and out of parks. Members own cruise ships and run group tour businesses, operate other major destinations and professional stadiums. Many of these companies are reaching out to customers and neighbors and employees with messages about COVID-19, including what the companies are doing and what steps those the companies reach can do to weather the challenges.

They are not alone. Many of us have seen hundreds of corporate and organizational outreaches – from Disney to Starbucks to United Airlines.

Attached is a selection of outreach messages by leading American businesses – many in the same businesses concessioners operate within parks: lodging, food, transportation and retail.

We will be discussing how we could reference national parks in communications as individual concessioners and as an industry. We can strive for synergy in this outreach and a reinforcement that national parks are a valuable refuge for the American public during times of stress. As NPHA member companies utilize email, social media, snail-mail and other outreach to millions of recent and upcoming park visitors, what can we do to help invite and host safe and beneficial visits by millions of Americans – just as NPHA members did in 2009 during the Great Recession?
For more than 90 years, Marriott has lived by a core value established by our founder, JW Marriott, Sr., to "take care of our guests and associates." This enduring value guides us as we face the difficult challenge of responding to the coronavirus (COVID-19), which the World Health Organization declared a pandemic on Wednesday.

Our hearts and thoughts go out to the people who have been affected by this unprecedented event and we appreciate the healthcare workers, local communities, and governments around the world who are on the front line working to contain this coronavirus. Please know that we are vigilantly monitoring the COVID-19 situation around the clock and have precautions in place to ensure a healthy stay at any of our hotels across the globe.

In this climate, we know travel may not be your first thought, but I want you to know the safety of our guests and associates is our top priority. I want to thank you in advance for putting your trust in Marriott as you plan for future travels. Below is an update on what we are doing, keeping your safety top of mind.

**When You Book**

You should have confidence when you book a stay at any of our hotels across the globe that we are doing everything we can to have accommodations ready for you. We are closely monitoring the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), and local health agencies for the latest developments related to COVID-19 and following the
guidance of government and public health officials. We are reinforcing these agencies' recommendations on the appropriate health and safety measures with our own hotel management teams and the hotel operators in our portfolio.

Before Your Stay

Given the impact of COVID-19 on how we work, socialize and travel, we have been adapting our cancellation policy over the past several weeks to the evolving nature of this epidemic. Today, we are updating our policy to provide our customers the most flexibility we can offer during these challenging times. Generally speaking, for guests with existing individual reservations, including reservations with pre-paid rates that are typically more restrictive, we will allow changes or cancellation without a charge up to 24 hours prior to arrival as long as the change or cancellation is made by April 30, 2020. For guests making new individual reservations between today and April 30, 2020, we will allow those reservations to be changed or cancelled at no charge up to 24 hours before a guest's scheduled arrival date. Please visit our website for the most up-to-date information and for additional details about availability and exclusions.

During Your Stay

We recognize that the COVID-19 virus has required all of us to be more mindful as we go through our regular activities. Daily, our hotels around the world are working to ensure that they meet the latest guidance from the CDC and WHO on hygiene and cleaning. Our hotels' health and safety measures are designed to address a broad spectrum of viruses, including COVID-19, and cover everything from handwashing hygiene and cleaning product specifications to guest room and common area cleaning procedures. Specific steps we are taking as a company can be found on our website.

For Our Marriott Bonvoy Members
We are focused on how the coronavirus is impacting our Marriott Bonvoy Members and have made some important updates to our loyalty program to provide greater flexibility when planning future travel. Specifically, we have paused points expiration until August 31, 2020 allowing Members ample time to redeem their points. In addition, we have extended the expiration of suite night awards (SNAs) with an expiration date of December 31, 2020 by one year to December 31, 2021. Lastly, Members who currently have an active Free Night Award (FNA) expiring in 2020 as part of their credit card benefit, annual choice benefit, promotions or travel package will be able to use it through January 31, 2021.

We understand that earning status for 2021 may also be on your mind. As the current situation is still evolving, it is too early for us to make any changes. We will keep you updated on all loyalty program changes through our Marriott Bonvoy member benefits website.

We recognize that these are unsettling times and whether you are traveling now or in the future, we want you to know that your safety and wellbeing are our first priority.

Whenever you travel, we are waiting with open doors and open hearts to serve you.

Arne Sorenson
President and CEO, Marriott International
On behalf of McDonald's® USA, I want to assure you that in times of uncertainty, the safety of our customers and people remains our highest priority.

Please know that we are keeping those affected by coronavirus (COVID-19) in our thoughts while we closely watch the evolving situation.

In the meantime, I want to inform you of the proactive steps McDonald's and our franchisees are taking to ensure the safety in our restaurants across all our communities – in proactive partnership with local and national health authorities.

For more than 65 years, McDonald's values of quality, service, and cleanliness have endured. Today, that same commitment guides all our actions. Specifically, we are:

- Adhering to our industry-leading, cleaning procedures in every restaurant, every day.
- Ensuring high-touch areas such as ordering kiosks, pick-up counters and restrooms get more frequent cleanings.
- Enhancing our McDelivery® procedures to ensure order packaging remains safe before we fill it with your favorite items so you can enjoy McDonald's at home.
- Supporting employees in staying home from work if they are sick so they can rest and recover.

More than ever, we are proud to honor our commitment to cleanliness so you feel confident dining with us.

We sincerely thank you for your continued business, and above all, for your trust in the Golden Arches.

Joe Erlinger
President, McDonald's USA
A message from our CEO, Patrick Pacious

To our valued customers,

In these times of uncertainty, we want you to know that the safety and health of guests, employees and franchisees are always a top priority. Now more than ever, our business is you.

We understand that with the rapidly changing updates on travel restrictions and cancelled or postponed public events, people are in different places when it comes to doing what is best for them and their families. We cannot stress enough that we believe in responsible and safe travel.

Travel is who we are, and it is important to us that you feel confident when choosing and staying with Choice Hotels®. That's why we are taking the following precautionary measures to provide peace of mind throughout your travels:

Enhanced Cancellation Policy

While we offer flexible rates to our guests year-round, we have also implemented an enhanced cancellation policy during this time. Currently, penalty-free cancellations are provided to:

1. Guests residing in China, South Korea, Japan and Italy with reservations at Choice Hotels in the United States and Canada.

2. Guests with reservations at Choice Hotels in China, Japan and Italy.

This policy will be in place until March 31, 2020.

For travel within the United States or Canada, Choice Hotels is now extending special exceptions for all Advance Purchase Rate non-refundable reservations made
directly with Choice Hotels on or before March 10, 2020 for travel through April 30, 2020. If interested, guests holding these prepaid reservations who choose not to travel may opt to receive Choice Privileges points for future travel. Reservations less than $75 total (local currency) receive 5,000 points, $75-$150 total (local currency) receive 7,500 points, and reservations greater than $150 total (local currency) receive 10,000 points. To receive points, you must contact our call center at 1-888-770-6800 more than 48 hours in advance of your stay. Guests who are non-members will need to join the Choice Privileges® Rewards Program in order to receive points.

Guests who booked via online travel agents or other third parties are advised to contact their booking provider for information on their policies and for assistance.

Environmental Cleaning Practices

As always, we are committed to upholding the highest standard of cleanliness by continuing to work closely with Ecolab, a global leader in cleaning products. Ecolab has shared best practices and the latest products that may be useful to combat the spread of COVID-19, and we have also provided our hotels with updated sanitation guidelines.

More information on our efforts can be found here.

As we continue to monitor developments and navigate through these challenging circumstances, we want you to know that you can rely on us always to put your health and safety first. Thank you for trusting in Choice.

We look forward to seeing you again soon.

Patrick Pacious
President & CEO
As a MileagePlus Premier® member, you are one of our most loyal customers, and I wanted to reach out to you personally to share the steps we are taking in response to the coronavirus (COVID-19) outbreak, including how it pertains to your Premier status.

By now, you also should have received an email from our CEO, Oscar Munoz, outlining all the steps we are taking to ensure the safety of our customers and employees when they travel on our aircraft.

We know customers are looking for more flexibility as they make their travel plans right now, and that’s why when you book a flight with us between March 3 and March 31, 2020, you can change it for free over the next 12 months. You can read more details by visiting the United Hub.

We’ve made changes to our international and domestic schedules, and those reductions — combined with your own corporate travel policies and personal travel choices — may impact some of your flying activity in the near-term. And we appreciate that some of our members are concerned about retaining and earning the status levels they anticipated prior to the coronavirus outbreak.

At this time, we are not planning any changes for our 2021 Premier program but we will continue to evaluate our options as we learn more about how the current climate is affecting members’ activity. In the interim though, we do plan to give members who are participating in a MileagePlus 2020 Premier Status Match Challenge promotion an additional 30 days to complete their challenge. This extension will automatically be reflected in member accounts within the next week.

I will stay in touch to keep you aware of any further decisions or adjustments and, as always, want to thank you for your continued relationship, and for your loyalty to United. At times like this, we are especially grateful for the strength of our MileagePlus member community and the strong bonds that we have built together. I look forward to seeing many of you on board throughout the year.

Safe travels,

Luc Bondar
Vice President, Loyalty and President of MileagePlus
United Airlines
To our valued customers and neighbors,

At Albertsons Companies, we know the important roles our store and pharmacy play in your life, and we are grateful for the trust you put in us for your needs. As the situation around Coronavirus has developed, we have been and will continue to monitor all information locally, nationally and globally so we can plan how best to serve you. I wanted to take a moment to share some of the things our team is doing:

• **Running Clean Stores and Pharmacies.** We have stepped up how often we clean and disinfect all departments, restrooms, and other high-touch points of the store, like checkstands and service counters. Cart wipes and hand sanitizer stations have been installed in key locations within the stores for your convenience, too. As always, we encourage customers to wash their fresh and packaged produce before consuming at home.

• **In-Stock Items.** In many markets, we are asking customers to respect quantity limits of select, high-demand items (like hand sanitizers and household cleaners) to help ensure more of our neighbors can find the products they need. We’re refilling high-demand products as quickly as we can.

• **Taking Care of Our Team.** All of our associates are encouraged to follow the CDC’s recommendations to keep themselves and their loved ones healthy. We are encouraging our associates to stay home when they feel ill, and are working with our Human Resources team to ensure that every member of our team who faces a crisis can have peace of mind that we will help them get through it. Please help us keep our store associates and community safe by considering use of our Grocery Delivery or Drive Up & Go services if you have a fever or flu symptoms such as cough or shortness of breath.

• **Planning for Local Needs.** Our team is also planning to make sure we can serve you if your community becomes impacted in a significant way. From a single case to local community outbreaks or situations, we have plans to keep our stores and pharmacies open and serving our communities.
• Shopping for You. Our Grocery Delivery, Pharmacy Delivery, and Drive Up & Go services are still available to you. You can find more information at your store’s website www.safeway.com. Our E-commerce team is following enhanced sanitization protocols for all of their equipment, and washing their hands and using hand sanitizer before every order. We’ve created “Contact Free” delivery procedures for our team and changed our signature processes so that our delivery drivers can sign for you when delivering your order, after completing an ID check, if necessary. Please use our “Contact Free” procedures if you or a household member has a fever or flu symptoms.

• Taking Care of You. Your health is important to us. Just as our team continues to follow the CDC’s guidance on staying healthy, we encourage you to do so, too. And don’t forget that our pharmacists are also available to help answer questions you might have or to offer advice for keeping you and your families healthy year-round.

We know your grocery store and local pharmacy are central to the community. It is a space we share every day. Maintaining your trust is a responsibility we all take very seriously. On behalf of our entire team, thank you for the opportunity to serve you and your community.

Vivek Sankaran
President & CEO, Albertsons Companies
Dear Valued Customer,

We recognize Coronavirus (COVID-19) is a serious concern to our customers. As a neighborhood store and convenient delivery provider in so many communities, 7-Eleven is monitoring the situation closely to prioritize the health of our customers, employees and Franchisees across more than 9,000 U.S. stores.

First and foremost, we've enhanced our standards and procedures for hygiene, handwashing, sanitation, food handling and preparation in stores and increased the frequency of cleaning high-touch surfaces. We are in constant communication with the Centers for Disease Control and Prevention (CDC) and are sharing updated guidelines from the World Health Organization (WHO) with stores.

Additionally, we are taking the following steps to keep our people safe and our facilities clean:

- Reiterating to employees and Franchisees the importance of staying home if individuals have any symptoms of the COVID-19 illness or if they feel sick.

- Displaying CDC-recommended hygiene posters in high-traffic areas in stores.

- Temporarily discontinuing the use of personal cups for hot and cold dispensed beverages. We will still honor the discount
offered for anyone who brings in a personal cup to participating stores.

- Working with vendors and suppliers to stock stores with high demand, essential products and making them easy for you to find.

- Demonstrating to you and the communities we serve that we are here to provide quality products at fair, honest prices. Any violations of federal, state or local price-gouging laws will not be tolerated. If you see this happening, report your concern here.

In order to support the communities that we serve, we ask that you please consider shopping with us only when you are feeling well. As a convenient alternative to in-store shopping, 7-Eleven also offers delivery to over 30 million households through the 7NOW delivery app. In response to CDC recommendations and requests from customers, we will offer a contactless delivery option beginning next week.

We’re committed to providing you with what you want, when and where you want it. We’ve been a leader in the convenience industry for over 93 years, and we’ll keep working hard every day to earn your trust and your business. If you have questions or suggestions, please reach out to our customer service team. Thank you for your patience, understanding and support during this time, and for making 7-Eleven part of your daily life.

Sincerely,

Joe DePinto
President & CEO
Chair Haaland, Ranking Member Young, and members of the Subcommittee, thank you for the opportunity to present the views of the Department of the Interior on H.R. 3681, a bill to establish the Green Spaces, Green Vehicles Initiative to facilitate the installation of zero-emissions vehicle infrastructure on National Forest System land, National Park System land, and certain related land, and for other purposes.

The Department appreciates efforts to enhance access to national parks and public lands, and is currently working with partners to meet the needs of those visitors who use electric vehicles. However, the Department does not support H.R. 3681 as the National Park Service (NPS) already has the authorities provided in this legislation, and needs to utilize resources to reduce the NPS deferred maintenance backlog and address other critical infrastructure needs.

H.R. 3681 would require the Department of Energy, the NPS, and the U.S. Forest Service (USFS) to collaborate on an initiative to facilitate the installation and use of zero-emission vehicle infrastructure in national parks, forests, and nearby communities by entering into agreements to acquire, install, and operate charging or fueling infrastructure for zero-emission vehicles; acquiring zero-emission fleet vehicles; providing information to the public such as maps and station availability; and allowing for employee use of charging infrastructure. In determining the location for zero-emission vehicle infrastructure, H.R. 3681 would require the agencies to complement, to the extent feasible, the alternative fuel corridor networks established by the Federal Highway Administration. The bill would authorize up to $50 million per year for this initiative.

H.R. 3681 would require the NPS and USFS to give priority consideration, when entering into an agreement for shuttle or other transportation services, to an entity with zero-emission vehicles. The bill would require the agencies to develop a strategy to, by 2030, increase the number of zero-emission vehicles in the fleet by either 125 percent or to a number that is 25 percent of the total fleet, whichever is greater.

This legislation is unnecessary, as the NPS currently has the statutory authority provided in this bill, including installing infrastructure to fuel or charge electric vehicles and acquiring electric vehicles in the fleet. Efforts to install electric vehicle charging infrastructure in the national parks have been underway since the first major auto manufacturers began offering electric vehicle models. With electric vehicles becoming a more viable transportation option for park
visitors as a result of increased battery ranges, there is increased demand for electric vehicle charging stations at national parks. To this end, the NPS has partnered with and completed charging installation efforts with several organizations.

Recently, BMW of North America, the National Park Foundation, the Department of Energy, and the NPS entered into a partnership for the installation of 100 electric vehicle charging stations at locations in and near national parks across the country. Overall, with the installation of the first electric vehicle charging station under this program at Thomas Edison National Historical Park, and including other initiatives, almost 150 charging stations have been installed system-wide, including in Death Valley National Park, Big Cypress National Preserve, Yellowstone National Park, and Cape Cod National Seashore. The NPS is also currently working with the California Energy Commission to complete additional electric vehicle charging installations at national parks in California.

Several parks have also added electric vehicle charging to support fleet vehicles. In 2019, more than a dozen all-electric cars and motorcycles were added to the US Park Police fleet, made possible through a partnership between the NPS and the Department of Energy. These vehicles provide transportation to law enforcement officers and staff in and around the National Mall and its memorials and monuments. In addition, the NPS has replaced some older diesel buses that shuttle visitors to and through national parks with new electric buses. Yosemite National Park recently procured two electric buses and other parks are considering the acquisition of electric buses for the 58 shuttle bus and tram systems currently operating in national parks.

Rather than mandate an unnecessary new program, the Department urges Congress to address the aging infrastructure and maintenance backlog facing the NPS. The President’s 2021 budget again includes a proposal to establish the Public Lands Infrastructure Fund to address the backlog of deferred maintenance on our public lands. One of our highest priorities is to address the crumbling roads, bridges, water systems, and facilities within the national park system.

Chair Haaland, this concludes my statement. I would be pleased to answer any questions you or other members of the Subcommittee may have.
Chairwoman Haaland, Ranking Member Young, and members of the Subcommittee, thank you for the opportunity to present the views of the Department of the Interior on H.R. 4236, a bill to encourage recycling and reduction of disposable plastic bottles in units of the National Park System, and for other purposes.

The Department does not support enactment of H.R. 4236.

H.R. 4236 would require each National Park Service (NPS) regional director to establish a program for recycling and reducing disposable plastic bottles within park units, including eliminating the sale of water in disposable plastic bottles in park units if several factors are considered. H.R. 4236 would also require each regional director to develop a visitor education strategy to establish visitor expectations of water availability and explain the disposable plastic bottle recycling and reduction program. The disposable plastic bottle recycling and reduction program would need to be incorporated into agreements with organizations operating within the National Park System units, including concessioners and cooperating associations. Not less than every two years, each regional director would be required to evaluate the recycling and reduction of disposable plastic bottles using criteria included in the proposed legislation.

Encouraging recycling and the reduction of waste at national park units has been a goal for the NPS. Since 1998, it has been the Department’s policy that each of its bureaus develop, implement, and conduct thorough recycling programs that assure compliance with the spirit and intent of applicable Federal, State, and local recycling requirements and provisions; promote sound environmental practices by preventing pollution and recovering resources through recycling; and educate and monitor for recycling participation at all of its activities, including those of contractors and concessioners.

In 2011, the NPS instituted a program similar to that proposed in H.R. 4236, encouraging park managers to eliminate the sales of water in disposable plastic bottles, with the installation of water bottle filling stations in parks as one of the key pre-conditions to implementation. However, the NPS rescinded this effort after a few years in 2017 in order to expand hydration choices for visitors. The program, which sought to eliminate sales of bottled water in fact removed the healthiest beverage choice while still allowing sales of bottled sweetened drinks, and did not result in a marked reduction in waste in the 23 parks that installed the program. Rescinding the sales ban allowed visitors to decide for themselves how to best stay hydrated during a park visit. Parks continue to promote the recycling of disposable plastic water bottles and many parks have worked with partners to provide free potable water in the bottle filling stations located at visitor centers and near trailheads.
From composting and dedicated recycling bins to water bottle filling stations to Propane Bottle Recycler machines which prepare lantern and camp stove fuel bottles for recycling, the NPS continues to implement new and innovative approaches to reduce waste in our landfills. In 2018, the NPS achieved a nearly 40 percent service-wide waste diversion rate, diverting approximately 26,000 tons of waste from our landfills. Many NPS sites utilize interpretive kiosks and active interpretive programs to inform and educate park visitors on the benefits of recycling, reducing and composting waste.

Chairwoman Haaland, this concludes my statement. I would be pleased to answer any questions you or other members of the Subcommittee may have.
CAMPGROUND INFORMATION FROM NPS

DATE: October 3, 2019

FROM: National Park Service

SUBJECT: NPS Campgrounds

KEY FACTS

- Campgrounds are an important resource for the National Park Service (NPS), providing a distinctive, low cost way for visitors to spend the night in a national park.
- At the end of Fiscal Year (FY) 2018, the National Park System included 1,421 campgrounds with 27,513 campsites.
- The deferred maintenance for campgrounds and related structures in national park sites is approximately $331.6 million. Of this, approximately $30.2 million resides in concession-assigned campgrounds and related structures. The total campground DM reflects 2.8% of the FY 2018 servicewide DM of $11.9 billion.
- Of the NPS’s 318 million visitors in 2018, camping visits accounted for an estimated 7.9 million nights, or 2% of total visits.
- The NPS seeks to engage with the public and other stakeholders to optimally manage toward visitor expectations and the vision for the second century of NPS campgrounds.

BACKGROUND

Campgrounds allow visitors to transform a day in nature into an epic experience and provide a low-cost way for visitors to spend the night in parks across the country. More than 318 million visitors visit parks annually, with tent, RV, and backcountry campers spending an estimated 7.9 million nights at park system campgrounds in 2018.

The variety of available NPS campground facilities and amenities is extremely broad, from primitive, unstaffed back country campsites to a campgrounds that provide hot showers or can accommodate 25’ Recreational Vehicles (RVs). Campgrounds are also managed through multiple models; some campgrounds are operated by the NPS, some by concessioners, and a few by other partners. The range and complexity of these models and amenities, in conjunction with limited financial resources, presents unique management challenges.

This briefing statement outlines the basic inventory, management models, planned investments and ongoing activities to support the next century of campgrounds in national parks.
CAMPGROUND INVENTORY

The NPS manages a vast and diverse asset portfolio. As of FY 2018 year end, the NPS has a total of 1,421 campgrounds containing 27,513 campsites servicewide per the Facility Management Software System (FMSS) and NPS.gov. This includes:

- 502 front country campgrounds containing 16,648 campsites
- 425 back country campgrounds containing 2,154 campsites
- 494 campgrounds without front or back country designations
- 355 campgrounds containing 18,688 campsites accessible by vehicle
- 772 group campsites

Amenities at campgrounds in the National Park System include:

- 1,015 comfort stations at 346 campgrounds
- 12,730 tent pads at 485 campgrounds
- 8,585 RV pads
- 426 campgrounds with water stations
- 130 campgrounds with year-round hot showers
- 1,889 campsites at 36 campgrounds with electrical hook ups
- 130 campgrounds with dumping stations
- 33 campgrounds with Wi-Fi
- 60 amphitheaters at 55 campgrounds
- 3,534 fire rings at 556 campgrounds
- 14 camp stores at 11 parks

MANAGEMENT MODELS

Of the Service’s 1,421 campgrounds, 1,340 are managed by NPS and 81 are managed through concessions contracts.

NPS-operated campgrounds. The NPS operates a wide variety of campgrounds, including the 502 front country campgrounds accessible by vehicle and 425 back country campgrounds typically accessible by hiking. The range of amenities and utility hookups that are appropriate to each campground is based on the park’s mission, campground location and size, availability of commercial campgrounds in the area, cost of installing and maintaining the amenities and utilities, and other considerations.

Revenue. Under the Federal Lands Recreation Enhancement Act, or FLREA, the NPS is authorized to collect fees when a “visitor uses a specific or specialized facility, equipment, or service” such as a campground. In FY 2018, the NPS Recreation Fee Program collected $36.3 million in fees associated with overnight stays.
These expanded amenity fees accounts for approximately 12% of the total recreation fee revenue collected. Expanded amenity fee rates are set by conducting comparability studies in the local area. The revenue is deposited as part of a park's overall FLREA revenue and spent in the same manner.

**Concessions-operated campgrounds.** Through the use of concession contracts or commercial use authorizations, the NPS provides commercial visitor services that are necessary and appropriate for public use and enjoyment. The park superintendent and concessions management team decide when it is necessary and appropriate to transfer operations to a concessioner based on park enabling legislation, planning documents, and substantial local market analysis.

**Revenue.** Concessioners’ gross receipts top $1 billion, including approximately 20% in lodging, 25% in merchandise and retail, and 20% in food and beverage revenue. Sixty of the 575 concessions contracts generate 85% of total gross receipts; 75% of contracts gross under $500,000. NPS requires an average 5% franchise fee on all contracts.

**INVESTMENTS**

Including the inventory associated with campgrounds, the NPS manages over 75,000 assets, including 18,000 miles of trails and thousands of culturally significant landscapes and monuments. Successfully maintaining NPS assets and infrastructure relies heavily on the carefully planned use of limited resources.

**NPS facility prioritization and investment.** The NPS utilizes its Capital Investment Strategy (CIS) to prioritize projects and direct funding towards our higher priority assets. This standard, servicewide priority-setting approach aligns investment decisions with a number of factors, including financial sustainability, resource protection, visitor use, and health and safety. Deploying both facility and financial data to support both day-to-day work management and long-term strategic decisions, NPS resources are primarily directed to deferred maintenance affecting the highest priority assets that support mission-critical infrastructure and visitor services.

**Deferred maintenance.** The deferred maintenance for campgrounds and related structures in national park sites is approximately $331.6 million. Of this, approximately $30.2 million resides in concession-assigned campgrounds and related structures. The total campground DM reflects 2.8% of the FY 2018 servicewide DM of $11.9 billion.
Planned funding. Planned and ongoing investments include funds from Franchise Fees, the Line Item Construction and Maintenance Program, Recreation Fee Program (Rec Fee), Repair Rehab (Re/Re), and Cyclic Maintenance Program (Cyclic). As of May 2019, the Project Management Information System (PMIS) contains 559 formulated campground projects totaling $114 million from FY 2019-2024 for the following fund sources:

<table>
<thead>
<tr>
<th>Fund Source</th>
<th>Number of Projects</th>
<th>Formulated Amounts (in Millions)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rec Fee</td>
<td>460</td>
<td>$99</td>
</tr>
<tr>
<td>Re/Re</td>
<td>34</td>
<td>$12</td>
</tr>
<tr>
<td>Cyclic</td>
<td>65</td>
<td>$4</td>
</tr>
<tr>
<td>Total</td>
<td>559</td>
<td>$114</td>
</tr>
</tbody>
</table>

* Table values may not sum to the total due to rounding.

Example projects include:

- $34 million for roads and parking lots associated with campgrounds
- $17 million for water station projects (includes water systems, water lines, water valves, etc.)
- $16 million for comfort stations associated with campgrounds
- $1 million for electrical hook-up projects
- $1 million for amphitheaters
- 44 projects include tent pads
- 20 projects include showers
- 8 projects include dump stations
- 44 projects include fire rings

Modernization. Many NPS campgrounds have a rustic charm to them, but many are in need of some level of modernization or rehabilitation to either meet visitor expectations or safety requirements. The NPS does not intend to modernize every campground but strives to make smart, consistent decisions on when to modernize or rehabilitate a campground based on the park’s unique circumstances, local market and financial factors, and applicable policies and regulations. In many cases, the investment of modernization and maintenance is cost prohibitive.

For example, in 2019 Sleeping Bear Dunes National Lakeshore will be renovating the comfort stations showers to make them Americans with Disabilities Act (ADA) compliant in Platte River Campground for $99,000. The renovations will rehabilitate the failing tile
and shower components and create an ADA compliant family friendly shower area layout. In 2020, Chickasaw National Recreational Area will be replacing shower assemblies, including associated electrical and plumbing, at Point and Buckthorn campgrounds for $54,000. Mount Rainier National Park replaced their wireless local area network (LAN) access point equipment in 2019 due to obsolete components that were no longer compliant with DOI and NPS security standards at a cost of $40,000.

As such, the NPS works to target projects for modernization investments that concurrently improve the visitor experience at high use facilities, reduce deferred maintenance, and limit ongoing operational liability.

ALIGNING VISITATION, DEFERRED MAINTENANCE, AND INVESTMENTS

To support thoughtful investment that aligns with the Department and servicewide goals of reducing deferred maintenance and improving the visitor experience, the NPS must balance competing needs and strategically target high value assets. Data-driven exercises considering campground occupancy and DM play a critical role.

**Overnight stays.** Occupancy of campgrounds varies widely, depending on location and proximity to metropolitan areas, access, amenities, and park natural and cultural resources, among other factors. The table below shows the top ten campgrounds with the highest FY 2018 occupancy that are reservable on Recreation.gov and the formulated projects associated with each location.

<table>
<thead>
<tr>
<th>#</th>
<th>Campgrounds</th>
<th>FY 2018 Campground Occupancy (# of individuals)</th>
<th>Formulated Amt ($)</th>
<th>Majority DM Projects (# of projects)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mather Campground (GRCA)</td>
<td>154,079</td>
<td>$ 3,786,446</td>
<td>5 of 7 projects</td>
</tr>
<tr>
<td>2</td>
<td>Upper Pines (YOSE)</td>
<td>128,113</td>
<td>$ 6,209,069</td>
<td>0 of 2 projects</td>
</tr>
<tr>
<td>3</td>
<td>Watchman Campground (ZION)</td>
<td>92,231</td>
<td>$ 2,803,754</td>
<td>6 of 8 projects</td>
</tr>
<tr>
<td>4</td>
<td>Moraine Park Campground (ROMO)</td>
<td>53,795</td>
<td>$ 1,269,873</td>
<td>5 of 5 projects</td>
</tr>
<tr>
<td>5</td>
<td>Assateague Island National Seashore Campground (ASIS)</td>
<td>51,035</td>
<td>$ 1,198,356</td>
<td>6 of 6 projects</td>
</tr>
<tr>
<td>6</td>
<td>Fort Pickens Campground (GUIS)</td>
<td>47,708</td>
<td>$ 1,052,227</td>
<td>4 of 5 projects</td>
</tr>
<tr>
<td>7</td>
<td>Pinnacles Campground (PINN)</td>
<td>44,382</td>
<td>$ 332,266</td>
<td>2 of 4 projects</td>
</tr>
<tr>
<td>8</td>
<td>Blackwoods Campground (ACAD)</td>
<td>44,289</td>
<td>$ 859,719</td>
<td>1 of 2 projects</td>
</tr>
</tbody>
</table>
VISION FOR THE SECOND CENTURY OF NPS CAMPGROUNDS

The NPS cannot feasibly modernize every campground nor do all resources dictate upgrades. Nonetheless, the NPS must be able to consistently and defensibly determine when the park’s unique circumstances, local market and financial factors, visitor expectations, and applicable policies and regulations support such investment. In response, a collaborative team from the NPS Offices of Park Planning Facilities Lands, Commercial Services, and the Denver Service Center are being deployed to provide guidance for future NPS campground projects.

Campground modernization and rehabilitation strategy. The team is engaging hospitality services contractors, CBRE, Inc. and CHM Government Services, to investigate the market support, required analysis, and related business practices to support a campground modernization and rehabilitation strategy. The study will:

- Assist in understanding current and developing future expectations for camping
- Develop a report that details considerations and recommendations for the NPS to take into account during the development of a servicewide campground strategy
- Develop a repeatable framework that can be utilized at the park level to assess whether a campground modernization or rehabilitation project should occur
- Develop a generic model for the Service to use compare costs and revenues of campground operations under both a Service and concessioner-operated campground
- Conduct pilots to test the process and tools in the following six parks’ campgrounds: Great Smoky National Park, Lake Mead National Recreation Area, Blue Ridge Parkway, Big Bend National Park, Rocky Mountain National Park, and Olympic National Park.

The scope of each pilot study CBRE, Inc. and CHM Government Services completes will include a campground industry analysis report, site visits, an analysis framework, and a financial analysis and model. These parks were chosen to be part of the study due to their variety of management model, seasonality, and amenities.

Development of Standard Design Elements. Concurrent with the completion of the servicewide campground strategy, the Denver Service Center will develop standard
design elements for amenities identified in the strategy for NPS campground modernization. The process will consider best practices from other federal agencies, states, and the private sector to inform design charrettes and value based decision making with key stakeholders and design team members. The final deliverable will consist of standards and guidelines, with sketches and illustrations where appropriate, to guide consistent campground modernization efforts across the service.

**Stakeholder engagement.** NPS must engage with the public and other stakeholders on our vision for the second century of campgrounds. This includes ongoing dialogue with the Outdoor Recreation Advisory Committee and its subcommittees.
National Park Service Second Century Campground Strategy

National Park Service Advisory Board
March 2020
National Park Service (NPS) Campgrounds at a Glance

- Low cost accommodations at 1,421 campgrounds
- 7.9 million stays in 2018
- $331.6 million in deferred maintenance
NPS Campgrounds at a Glance

Range of facilities and amenities includes:

- 25’ RV pull-throughs to unstaffed back-country sites
- 36 campgrounds with electric hook-ups
- 426 campgrounds with water stations
- 131 campgrounds with year-round hot showers
- 33 campgrounds with Wi-Fi
NPS Campgrounds at a Glance

Multiple management models include:

- NPS-operated
- Concessions-managed
Managing the Second Century of Campgrounds

There is a growing interest in expanding public recreation access. The National Park Service must:

- Determine the criteria for an updated campground
- Generate tools to support sound financial investment
- Ensure use of a repeatable decision framework
Second Century Campground Strategy

Teams across NPS directorates are working together on the strategy, which consists of the following three main branches:

1. Campground inventory / data management improvement
2. Market analysis contracts
3. Development of campground design guide
Managing the Second Century of Campgrounds

Strategy development has been funded and initiated; it won’t:

- Change every campground
- Make all campgrounds the same
Managing the Second Century of Campgrounds

The three branches of the strategy create a suite of management decision tools and resources for:

- Business case for investment
- Efficient and consistent financial decisions
- Reduce deferred maintenance
- Align with NPS funding goals
Campground Inventory / Data Management

Cross disciplinary NPS team includes:

- Park Planning Facilities and Lands
- Commercial Services
- Conservation and Outdoor Recreation
- Office of Communications – Digital and nps.gov
- recreation.gov
Campground Inventory / Data Management

**Goals** include:

- Develop comprehensive and reliable data set
- Incorporate data-driven decision making
- Standardize data across public lands reservations
- Increase availability of digital reservations
- Expand reservation details to improve visitor experience (views, site size, site power, etc.)
Recreation.gov user benefits include:

- Reserve and pay for more than 100,000 campsites
- Reservations for sites, tickets, permits, and lotteries
- Real-time visitor updates
Recreation.gov **park benefits** include:

- No up-front cost to parks
- Reduction in cash handling
- Consolidated reporting to support management decisions
Market Analysis Contracts

Contracted work is underway to develop analysis requirements, including:

- Discussion of fiscal and operational realities
- Total life-cycle costs, including operations and maintenance
- Safety and accessibility
- Policy and regulation
Market Analysis Contracts

Contract task order deliverables include:

- Industry analysis report
- Financial strategy tool
- Operating decision framework tool
- Pilot park site visits
Market Analysis Contracts

Industry analysis goals include:

- Increase understanding of current and future visitor expectations
- Summarize national and regional camping markets
- Survey practices of other public land management agencies
Market Analysis Contracts

Financial strategy tool goals include:

- Standardized decision process for campground investment
- Consideration of total life-cycle costs
- Reduction of deferred maintenance
Market Analysis Contracts

Operating decision framework tool goals include:

- Consistent consideration of appropriate campground operating model
  - NPS operated
  - Third-party operated / concession contract
  - Visitor Enhancement Improvement Authority (VEIA) contracts

- Cost-benefit analysis
Market Analysis Contracts

Pilot park inclusion for development and testing of tools. The following six pilot parks were selected:

- Lake Mead National Recreation Area
- Olympic National Park
- Great Smoky Mountains National Park
- Big Bend National Park
- Blue Ridge Parkway
- Glen Canyon National Recreation Area
Market Analysis Contracts

Pilot park campgrounds include:

- Range of seasonal and year-round campgrounds
- Array of sizes from 5 to 244 sites
- Diversity of management models
- Variety of amenities (showers, utilities, etc.)
- Both remote and developed locations
Development of Campground Design Guide

Standard design elements are needed for efficiency and consistency. A design guide should:

▪ Simplify process for park managers

▪ Include rehabilitation, expansion, and reduction considerations

▪ Centralize code compliance resources (including Mission 66)
Development of Campground Design Guide

Improve **accessibility** and **universal design**

- **accessibility** refers to a minimum standard to meet legal regulations; e.g., sidewalk slopes

- **universal design** is the design of buildings, products, or environments to make them accessible to all people regardless of age, disability, or other factors
Development of Campground Design Guide

Seven principles of universal design:

1. Equitable use
2. Flexibility in use
3. Simple and intuitive use
4. Perceptible information
5. Tolerance for error
6. Low physical effort
7. Size and space for approach and use
We request the NPS Advisory Board provide recommendations for improving accessibility and universal design in campgrounds for inclusion in the NPS design guide.
Questions and Discussion
To amend title 54, United States Code, to establish, fund, and provide for the use of amounts in a National Parks and Public Land Legacy Restoration Fund to address the maintenance backlog of the National Park Service, the United States Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, and the Bureau of Indian Education, and to provide permanent, dedicated funding for the Land and Water Conservation Fund, and for other purposes.
SECTION 1. SHORT TITLE.

This Act may be cited as the “Great American Outdoors Act”.

SEC. 2. NATIONAL PARKS AND PUBLIC LAND LEGACY RESTORATION FUND.

(a) IN GENERAL.—Subtitle II of title 54, United States Code, is amended by inserting after chapter 2003 the following:

“CHAPTER 2004—NATIONAL PARKS AND PUBLIC LAND LEGACY RESTORATION FUND

“Sec.

§ 200401. Definitions

“In this chapter:

“(1) ASSET.—The term ‘asset’ means any real property, including any physical structure or grouping of structures, landscape, trail, or other tangible property that—

“(A) has a specific service or function; and

“(B) is tracked and managed as a distinct, identifiable entity by the applicable covered agency.

“(2) COVERED AGENCY.—The term ‘covered agency’ means—

“(A) the Service;
“(B) the United States Fish and Wildlife Service;

“(C) the Forest Service;

“(D) the Bureau of Land Management;

and

“(E) the Bureau of Indian Education.

“(3) FUND.—The term ‘Fund’ means the National Parks and Public Land Legacy Restoration Fund established by section 200402(a).

“(4) PROJECT.—The term ‘project’ means any activity to reduce or eliminate deferred maintenance of an asset, which may include resolving directly related infrastructure deficiencies of the asset that would not by itself be classified as deferred maintenance.

§ 200402. National Parks and Public Land Legacy Restoration Fund

“(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ‘National Parks and Public Land Legacy Restoration Fund’.

“(b) DEPOSITS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), for each of fiscal years 2021 through 2025, there shall be deposited in the Fund an
amount equal to 50 percent of all energy development revenues due and payable to the United States from oil, gas, coal, or alternative or renewable energy development on Federal land and water credited, covered, or deposited as miscellaneous receipts under Federal law in the preceding fiscal year.

“(2) Maximum Amount.—The amount deposited in the Fund under paragraph (1) shall not exceed $1,900,000,000 for any fiscal year.

“(3) Effect on Other Revenues.—Nothing in this section affects the disposition of revenues that—

“(A) are due to the United States, special funds, trust funds, or States from mineral and energy development on Federal land and water; or

“(B) have been otherwise appropriated—

“(i) under Federal law, including—

“(I) the Gulf of Mexico Energy Security Act of 2006 (43 U.S.C. 1331 note; Public Law 109–432); and

“(II) the Mineral Leasing Act (30 U.S.C. 181 et seq.); or

“(ii) from—
“(I) the Land and Water Conservation Fund established under chapter 2003; or

“(II) the Historic Preservation Fund established under chapter 3031.

“(c) AVAILABILITY OF FUNDS.—Amounts deposited in the Fund shall be available to the Secretary of the Interior and the Secretary of Agriculture, as provided in subsection (e), without further appropriation or fiscal year limitation.

“(d) INVESTMENT OF AMOUNTS.—

“(1) IN GENERAL.—The Secretary may request the Secretary of the Treasury to invest any portion of the Fund that is not, as determined by the Secretary, in consultation with the Secretary of Agriculture, required to meet the current needs of the Fund.

“(2) REQUIREMENT.—An investment requested under paragraph (1) shall be made by the Secretary of the Treasury in a public debt security—

“(A) with a maturity suitable to the needs of the Fund, as determined by the Secretary; and

“(B) bearing interest at a rate determined by the Secretary of the Treasury, taking into
consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

“(3) Credits to Fund.—The income on investments of the Fund under this subsection shall be credited to, and form a part of, the Fund.

“(e) Use of Funds.—

“(1) In General.—Amounts deposited in the Fund for each fiscal year shall be used for priority deferred maintenance projects in the System, National Wildlife Refuge System, public land administered by the Bureau of Land Management, Bureau of Indian Education schools, and the National Forest System, as follows:

“(A) 70 percent of the amounts deposited in the Fund for each fiscal year shall be allocated to the Service.

“(B) 10 percent of the amounts deposited in the Fund for each fiscal year shall be allocated to the United States Fish and Wildlife Service.

“(C) 10 percent of the amounts deposited in the Fund for each fiscal year shall be allocated to the Forest Service.
“(D) 5 percent of the amounts deposited in the Fund for each fiscal year shall be allocated to the Bureau of Land Management.

“(E) 5 percent of the amounts deposited in the Fund for each fiscal year shall be allocated to the Bureau of Indian Education.

“(2) LIMITATIONS.—

“(A) NON-TRANSPORTATION PROJECTS.—Over the term of the Fund, within each covered agency, not less than 65 percent of amounts from the Fund shall be allocated for non-transportation projects.

“(B) TRANSPORTATION PROJECTS.—The remaining amounts in the Fund may be allocated for transportation projects of the covered agencies, including paved and unpaved roads, bridges, tunnels, and paved parking areas.

“(C) PLAN.—Any priority deferred maintenance project funded under this section shall be consistent with any transportation, deferred maintenance, or capital improvement plan developed by the applicable covered agency.

“(f) PROHIBITED USE OF FUNDS.—No amounts in the Fund shall be used—

“(1) for land acquisition;
“(2) to supplant discretionary funding made available for annually recurring facility operations, maintenance, and construction needs; or

“(3) for bonuses for employees of the Federal Government that are carrying out this section.

“(g) Submission of Priority List of Projects to Congress.—Not later than 180 days after the date of enactment of this section, the Secretary and the Secretary of Agriculture shall submit to the Committees on Energy and Natural Resources and Appropriations of the Senate and the Committees on Natural Resources and Appropriations of the House of Representatives a list of projects that—

“(1) are identified by the Secretary and the Secretary of Agriculture as priority deferred maintenance projects; and

“(2) as of the date of the submission of the list, are ready to be implemented.

“(h) Submission of Annual List of Projects to Congress.—Until the date on which all of the amounts in the Fund are expended, the President shall submit to Congress, together with the annual budget of the United States, a list of projects to be funded from the Fund that includes a detailed description of each project, including
the estimated expenditures from the Fund for the project for the applicable fiscal year.

“(i) Public Donations.—

“(1) In General.—The Secretary and the Secretary of Agriculture may accept public cash or in-kind donations that advance efforts—

“(A) to reduce the deferred maintenance backlog; and

“(B) to encourage relevant public-private partnerships.

“(2) Credits to Fund.—Any cash donations accepted under paragraph (1) shall be—

“(A) credited to, and form a part of, the Fund; and

“(B) allocated to the covered agency for which the donation was made.

“(3) Other Allocations.—Any donations allocated to a covered agency under paragraph (2)(B) shall be allocated to the applicable covered agency independently of the allocations under (e)(1).

“(j) Required Consideration for Accessibility.—In expending amounts from the Fund, the Secretary and the Secretary of Agriculture shall incorporate measures to improve the accessibility of assets and accom-
modate visitors and employees with disabilities in accordance with applicable law.”

(b) Clerical Amendment.—The table of chapters for subtitle II of title 54, United States Code, is amended by inserting after the item relating to chapter 2003 the following:


(c) GAO Study.—Not later than 5 years after the date of enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a study on the implementation of this Act and the amendments made by this section, including whether this section and the amendments made by this section have effectively reduced the priority deferred maintenance backlog of the covered agencies (as that term is defined in section 200401 of title 54, United States Code); and

(2) submit to Congress a report that describes the results of the study under paragraph (1).

SEC. 3. PERMANENT FULL FUNDING OF THE LAND AND WATER CONSERVATION FUND.

(a) In General.—Section 200303 of title 54, United States Code, is amended to read as follows:

“§ 200303. Availability of funds

“(a) In General.—Any amounts deposited in the Fund under section 200302 for fiscal year 2021 and each
fiscal year thereafter shall be made available for expenditure, without further appropriation or fiscal year limitation, to carry out the purposes of the Fund (including accounts and programs made available from the Fund pursuant to the Further Consolidated Appropriations Act, 2020 (Public Law 116–94; 133 Stat. 2534)).

“(b) ADDITIONAL AMOUNTS.—Amounts made available under subsection (a) shall be in addition to amounts made available to the Fund under section 105 of the Gulf of Mexico Energy Security Act of 2006 (43 U.S.C. 1331 note; Public Law 109–432) or otherwise appropriated from the Fund.

“(c) ALLOCATION AUTHORITY.—

“(1) SUBMISSION OF COST ESTIMATES.—The President shall submit to Congress detailed account, program, and project allocations of the full amount made available under subsection (a) as part of the annual budget submission of the President.

“(2) ALTERNATE ALLOCATION.—

“(A) IN GENERAL.—Appropriations Acts may provide for alternate allocation of amounts made available under subsection (a), including allocations by account, program, and project.

“(B) ALLOCATION BY PRESIDENT.—
“(i) **NO ALTERNATE ALLOCATIONS.**—
If Congress has not enacted legislation establishing alternate allocations by the date on which the Act making appropriations for the Department of the Interior, Environment, and Related Agencies for the remainder of the applicable fiscal year is enacted into law, amounts made available under subsection (a) shall be allocated by the President.

“(ii) **INSUFFICIENT ALTERNATE ALLOCATION.**—If Congress enacts legislation establishing alternate allocations for amounts made available under subsection (a) that are less than the full amount appropriated under that subsection, the difference between the amount appropriated and the alternate allocation shall be allocated by the President.

“(3) **RECREATIONAL PUBLIC ACCESS.**—
Amounts expended from the Fund under this section shall be consistent with the requirements for recreational public access for hunting, fishing, recreational shooting, or other outdoor recreational purposes under section 200306(e).
“(4) ANNUAL REPORT.—The President shall submit to Congress an annual report that describes the final allocation by account, program, and project of amounts made available under subsection (a), including a description of the status of obligations and expenditures.”.

(b) CONFORMING AMENDMENT.—Section 200302(c) of title 54, United States Code, is amended by striking paragraph (3).

(c) CLERICAL AMENDMENT.—The table of sections for chapter 2003 of title 54, United States Code, is amended by striking the item relating to section 200303 and inserting the following:

“200303. Availability of funds.”.
The Great American Wine Company is proud to partner with the National Park Foundation. A partnership, pairing the spirit of Americana with the focus of sustainability for the planet and our parks. Our winery is committed to helping preserve history, the National Parks as well as National monuments, through the donation of $3 to the National Park Foundation for every case sold.

We look forward to the opportunity of National Park visitors adding one of our excellent wines to their experience—all crafted from grapes grown in California—and knowing that a portion of their purchase will aid park trails and more.

Please visit our site, www.tgawc.com, for more details on our brand and wines. If you would have inquiries on the partnership or would like to collaborate within your participating parks, please contact Rachael Kroneder Rachael.Kroneder@broncowine.com.

CURRENT PARTNERSHIP TIMEFRAME:
JANUARY 2020—JANUARY 2021
Jonathan Wolfson was appointed Deputy Assistant Secretary for Policy in July 2019. As Deputy Assistant Secretary, Wolfson coordinates the Department’s regulatory process to help to advance the Department’s policy agenda. He regularly works with leadership and teams of economists, attorneys, and policy analysts across the Department to develop and analyze the regulations issued by the Department’s agencies.

Immediately before he joined the U.S. Department of Labor, Wolfson spent seven years as a litigator and regulatory attorney at McGuireWoods LLP. Wolfson previously served as a law clerk to The Honorable Edith Brown Clement of the U.S. Court of Appeals for the Fifth Circuit. Before law school, Wolfson was a policy analyst at the President’s Council of Economic Advisers.

Wolfson holds a Bachelor of Arts in Economics from Washington University in St. Louis and a Juris Doctor from the University of Virginia School of Law, where he was an Olin Law & Economics Fellow and won the John M. Olin Prize for best original law and economics research.
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