

RMR Conversion to Component Renewal Reserve

Issue	NPHA proposal	Interior Proposed Rule	Garden	Van Ness Feldman	Russ Molari Analysis
<p>RMR Conversion to Component Renewal Reserve</p>	<p>NPHA did not propose changes regarding the RMR.</p>	<p>§ 51.81 May the Director include “special account” provisions in concession contracts? * * * * *</p> <p>(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a component renewal reserve to be used at the direction of the Director solely for renewal of real property components located in park areas and utilized by the concessioner in its operations. Component renewal reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Component renewal reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from these reserves will be expended only for the renewal of real property components assigned to the concessioner by the Director for use in its operations.</p>	<p>Change from “repair and maintenance reserve” to “component renewal reserve” (§ 51.81): NPS unilaterally proposed to codify its existing effort to incorporate “component renewal” into concession contracts by proposing a regulation that explicitly allows it to set up “component renewal reserves” rather than “repair and maintenance reserves.” NPS claims this change is needed to clarify that these funds cannot be used for ordinary maintenance. However, the concern is that the agency is actually trying to use these funds for what otherwise should qualify for LSI. The proposed regulation would assist NPS’ efforts to avoid LSI by breaking down projects which are “capital improvements” qualifying for LSI into smaller projects that NPS will insist do not qualify for LSI. NPHA may want to submit comments that raise this concern and point out that the regulation may be used by the agency to claim fixtures, such as sprinkler systems, do not qualify for LSI when in fact, under the law, they do.</p>	<p>Special Accounts. Existing regulations allow NPS to require concessioners to set aside a percentage of gross receipts in a repair and maintenance reserve to be used at NPS’s direction for maintenance and repair of real property improvements used in concession operations. The proposed rule would replace the term “repair and maintenance reserve” with “component renewal reserve” to clarify that the reserve is not intended for routine maintenance and repair activities, but rather to fund projects to replace systems and components that have reached the end of their design life, are non-recurring within a seven-year time frame, and are not part of an LSI-eligible capital improvement project. This change would apply to current concession contracts if the contract was amended, as well as future contracts. NPS also seeks public comment on other ways to incentivize concessioners to complete component renewal activities, such as whether contracts could contain provisions that allow the concessioner to deduct from its periodic franchise fee payments amounts that were expended</p>	<p>SPECIAL ACCOUNTS This change formalizes NPS’s recent shift in new contracts to separate Component Renewal from Repair and Maintenance, while prohibiting concessioner-funded Component Renewal Reserves from being used for repair and maintenance. In the last few years, this shift has increased some concessioners’ commitment and total burden for maintenance, since “repairs” must now be done outside of the context of the Component Renewal Reserves. For example, a contract may currently have a 4% Repair and Maintenance Reserve, which can be used for repairs, maintenance, and component renewal. The new clause can change this to a 4% Component Renewal Reserve, which can only be used for component renewal. Once the change is made, the concessioner now is obligated to spend 4% on component renewal AND to pay separately for any additional repairs and maintenance that are not component renewal.) This change says it will “apply to current concession contracts if the contract was amended as well as future contracts.” That means NPS will send the contract amendment to some existing concession contracts and ask the concessioner to accept it. For some contracts, this can be a significant change, and certainly not one that a concessioner will want to accept mid-contract. The narrative invites comments on an <u>alternative</u>, “whether concession contracts could contain provisions that</p>

				<p>by the concessioner during the preceding period for component renewal activities.</p>	<p><i>allow the concessioner to deduct from its periodic franchise fee payments, amounts that were expended by the concessioner during the preceding period for component renewal activities.”</i></p> <ul style="list-style-type: none">● Under most circumstances, this Alternative <u>seems</u> like a better approach for concessioners, but we should be mindful that it would entail <u>an item-by-item approval process</u> that could be a nightmare with some Concession Specialists. (Further, some concessioners have Concession Specialists that are required to defer to Regional Concessions Management for review of maintenance item claims.)● A franchise fee reduction arrangement to compensate component renewal expenditures probably would still leave repair and maintenance expenditures completely up to the concessioner to pay. While this is “normal” for many concessions, concessioners must evaluate the typical balance between the two types of expenditures.
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